

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of December 18, 2012

**SUBJECT: Blue Heron Pond Planned Project Site Plan for City Council Approval
(2536 West Liberty Street)
File No. SP12-031**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Blue Heron Pond Planned Project Site Plan, subject to maintaining a minimum of 65% usable open space and subject to resolving outstanding Systems Planning Unit comments prior to City Council approval.

STAFF RECOMMENDATION

Staff recommends that this petition be **approved**, because, if the proposed conditions are met, the development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land; comply with local, state and federal laws and regulations; would not cause a public or private nuisance; and would not have a detrimental effect on public health, safety or welfare.

LOCATION

The site is located on the northwest corner of West Liberty Street and South Maple Road (West Area, Allens Creek Watershed).

DESCRIPTION OF PETITION

The subject parcel is 7.8 acres and is zoned R4B (Multiple-Family Dwelling District). The site was previously site planned as West Towne Condominiums and was approved in 2005 (expired 2008). The existing building, which contains 11 attached dwelling units, was constructed in 2006 and was vacant until Spring 2012 when the current owners purchased the site. All infrastructure, including utilities, storm water management system and access drives, were installed by the former owners before construction was discontinued. The utilities, including a new fire hydrant, were inspected and accepted by the City.

At this time, the petitioner is requesting planned project site plan approval in order to construct 53 additional attached residential apartment units for a total of 64 units on the site, a reduction from the 87 units previously approved with the West Towne Site plan. Nine buildings will be located around the wetland and four buildings fronting on West Liberty, with access provided by the existing paved driveways. The project is proposed to be phased, with the four units along Liberty and associated parking constructed first; the remaining five buildings will be constructed in the second phase. The units will be a mix of two and three bedroom units and will range in size from 980 to 2,577 square feet.

The petitioner is requesting a Planned Project designation in order to reduce the required building separation from 20 feet to 15.7 feet in between Buildings 'J' and 'C' along West Liberty. The petitioner indicates the modification will allow more efficient use of the site by allowing for separate buildings rather than one large building and will increase open space and present a smaller scale of development along the street. The petitioner is proposing usable open space in excess of the requirement in exchange for the modification: 65% of the site is proposed to be usable open space, which is 10% more than required by the Zoning Ordinance.

Each unit will have a one-car attached garage and interior bicycle parking. There will be a total of 36 surface parking spaces distributed in nine small parking lots on the site. There will be eight exterior bicycle parking spaces provided adjacent to the wetland on the north side of the site.

No natural features will be disturbed for this proposal. There is a large wetland located in the center of the site. A wetland use permit and wetland mitigation plan were approved in 2005 in association with the West Towne project site plan. The current proposal adheres to the approved mitigation plan and will remain outside of the 25 foot natural features buffer.

Storm water management has been installed and is functioning using a combination of underground and surface detention systems. The current plan has slightly less impervious surface than the previously approved plan.

Public sidewalks have been constructed along West Liberty and South Maple, and interior sidewalk connections will be added to the site. A portion of the interior sidewalk will be provided along the wetland area, but will remain outside of the natural features buffer.

A development agreement was approved and recorded as a result of the West Towne Project. The development agreement runs with the property, and the new owner has acquired all responsibility and obligations as a result.

The estimated cost of construction is \$ 4,200,000.

CITIZEN PARTICIPATION

The petitioner held a meeting for interested citizens on October 15, 2012, two weeks prior to submitting the petition. Invitations were sent to all residents and property owners within 1,000 feet of the site as well as all subscribers to the GovDelivery planning update service. Seven people attended the meeting. The attendees asked questions about types of units, unit size, treatment of the wetland and access. The full report provided by the petitioner is attached.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Commercial	C3 (Fringe Commercial District)
EAST	Commercial	C3 (Fringe Commercial District)
SOUTH	Residential	R1C (Single-Family Residential District)
WEST	Commercial	C3 (Fringe Commercial District)

COMPARISON CHART

		EXISTING	PROPOSED	REQUIRED
Zoning		R4B (Multiple-Family)	R4B (Multiple-Family)	R4B (Multiple-Family)
Gross Lot Area		7.8 acre (340,579 sf)	7.8 acre (340,579 sf)	0.3 acre (14,000 sf)
Lot Area per Dwelling Unit		30,953 sf	5,320 sf	2,900 sf MIN
Open Space in % of Lot Area		>80%	65.1%	55% MIN
Setbacks	Front	115 ft	26.5 ft (Liberty) 73.4 ft (Maple)	15 ft MIN 40ft MAX
	Side(s)	175ft (West)	27.4 ft (West)	12 ft MIN
	Rear	400+ ft (North)	44.8 ft	30 ft MIN
Height		29.5 ft (approx)	34.9 ft/3 story	35 ft MAX
Parking - Automobiles		11 spaces (garage)	104 spaces	96 spaces MIN
Parking – Bicycles		11 spaces	64 spaces – Class A (garages) 8 spaces – Class C	13 spaces MIN total (50% Class A, 50% Class C)

HISTORY

As noted above, the site was originally site planned as West Towne Condominiums in 2005. The previous owner constructed one 11-unit building and ceased construction. The current owner purchased the site in early 2012.

In early 2012, the current owner requested Certificates of Occupancy for the existing unoccupied units. At that time City staff verified infrastructure installation and confirmed all elements of the previously approved site plan were installed. City staff also inspected the wetland to verify compliance with the previously approved wetland mitigation plan. Several improvements were done to the wetland and city staff confirmed compliance with the approved mitigation plan in Spring 2012.

PLANNING BACKGROUND

The City of Ann Arbor Master Plan: Land Use Element recommends multiple-family residential use for this site.

The City of Ann Arbor Non-Motorized Transportation Plan recommends a shared use path/sidewalk along S. Maple and bicycle lanes along W. Liberty.

Chapter Five of the City of Ann Arbor Master Plan: Land Use Element recommends following community oriented design for the site plan. The design recommendations for townhome developments include rear accessed garages, front porches and clustered design to preserve natural features. The plan also encourages providing on-site playground, open space, and pedestrian linkages.

PLANNED PROJECT STANDARDS

Planned project approval is requested to allow a reduced front building separation in between Buildings "J" and "C" from 20 feet to 15.7 feet. As stated by the petitioner, the modification will allow more efficient use of the site by allowing for separate buildings rather than one large building and increasing open space and presenting a smaller scale of development along Liberty.

Based upon compliance with the following standards, the Planning Commission may recommend approval, and City Council may approve modifications of the area, height and placement regulations of the Zoning Chapter in the form of a planned project site plan: (Petitioner comments are in plain type)

- 1. The lot(s) included in the planned project must meet the minimum gross lot size requirement of the zoning district in which they are located.**

The lot meets the minimum gross size.

- 2. The proposed modifications of zoning requirements must provide one or more of the following:**

- a) Usable open space in excess of the minimum requirement for the zoning district.**
- b) Building or parking setback(s) in excess of the minimum requirement for the zoning district.**
- c) Preservation of natural features that exceeds ordinance requirements, especially for those existing features prioritized in the land development regulations as being of highest and mid-level concern.**
- d) Preservation of historical or architectural features.**
- e) Solar orientation or energy conserving design.**
- f) An arrangement of buildings which provides a public benefit, such as transit access, pedestrian orientation, or a reduced need for infrastructure or impervious surface.**
- g) Affordable housing for lower income households.**
- h) Permanent open spaces of 20 percent or more in any low-density residential district.**

Useable Open Space is greater than required, 65% versus 55% required.

- 3. The planned project shall be designed in such a manner that traffic to and from the site will not be hazardous to adjacent properties.**

Traffic will not be hazardous to adjacent properties.

- 4. The proposed modifications shall be consistent with the proper development and use of adjacent land and buildings.**

The proposed modifications do not cause inconsistencies with proper development and use of adjacent land and buildings.

- 5. Required off-street parking and landscaping must be provided in accordance with the provisions of Chapters 59 and 62.**

Parking and landscaping are provided in accordance with all ordinances.

- 6. The standards of density, allowable floor area and required usable open space for the zoning district(s) in which the project is located must be met.**

The required standards are met.

- 7. There shall be no uses within the proposed project which are not permitted uses in the zoning district(s) in which the proposed project is to be located.**

The proposed use is allowed in this zoning district.

STAFF COMMENTS

Systems Planning – A total of 19 footing drain disconnects or equivalent will be required for the entire project. Four footing drain disconnects were required for occupancy of the existing building and have been completed by the petitioner. Minor text revisions are needed to the utility plan and correct dimensions added to the Liberty drive detail.

Natural Resources – The wetland and buffer area were reviewed and inspected for compliance with the approved wetland mitigation plan. City staff has verified all plantings and mitigation were completed in accordance with the plan.

Planning – The project design and site layout are consistent with many of the objectives from the City's Master Plan including: garages underneath units, pedestrian orientation and minimizing impact on natural features. The new plan represents a decrease of 23 units from the approved West Towne plan. The decrease in total units results in more open space while still providing new residential units in close proximity to transit, commercial and office amenities.

Parks – The Parks donation of \$26,000 was received and used for improvements to South Maple Park.

Prepared by Matt Kowalski
Reviewed by Wendy Rampson

Attachments: Parcel/Zoning Map
Aerial Photo
Site Plan
Landscape Plan
Architectural Elevations
Recorded Development Agreement
Citizen Participation Report

c: Petitioner: West Towne Acquisitions LLC
Mr. James Franke
8178 Jackson Road Ste D
Ann Arbor MI. 48103

Petitioner's Representative: Scott Betzoldt
Midwestern Consulting
3815 Plaza Drive
Ann Arbor, MI 48108

City Attorney
Systems Planning
File Nos. SP12-031

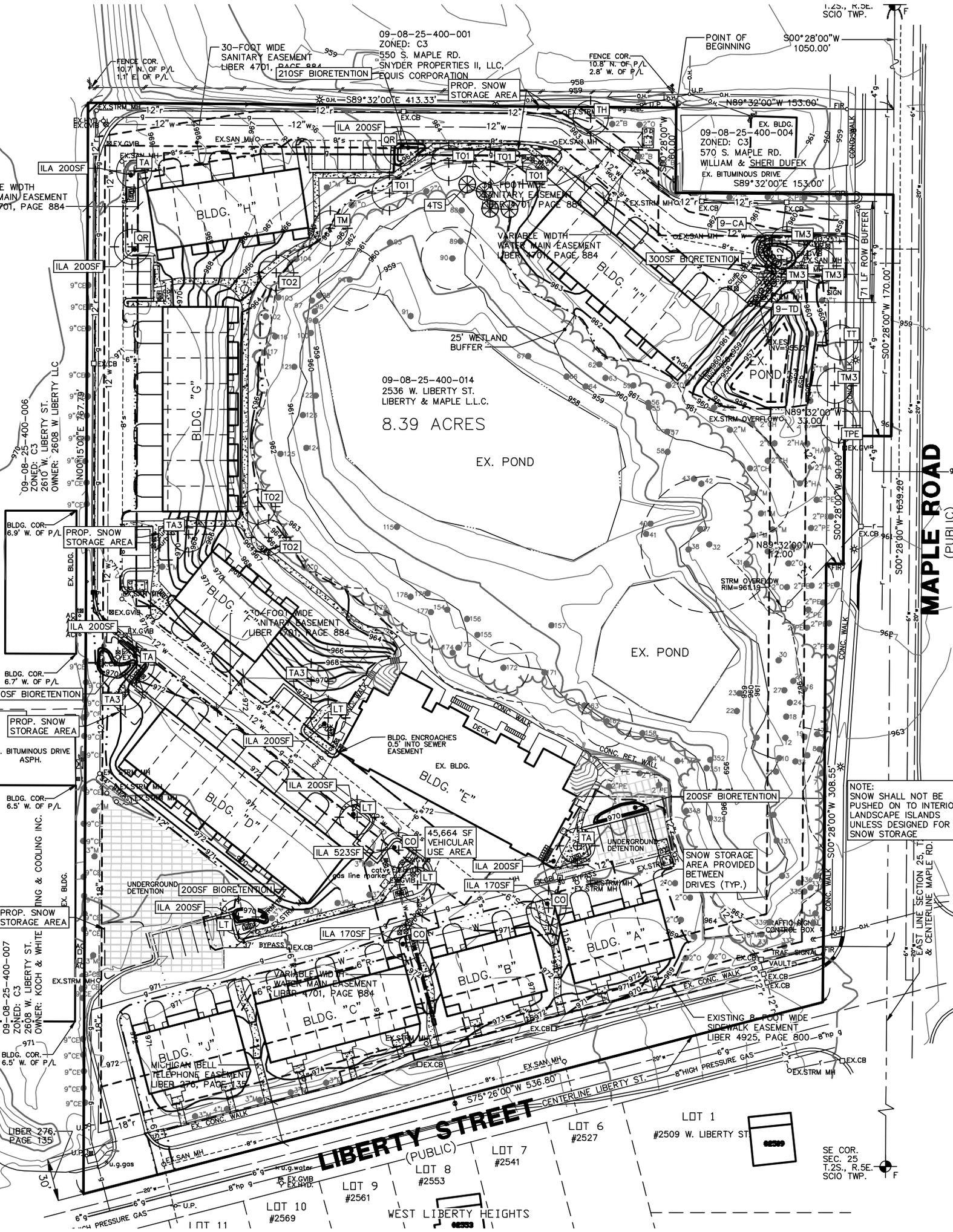
2536 W Liberty St -Aerial Map-



-  Railroads
-  Huron River
-  Parcel Property



City of Ann Arbor Map Disclaimer:
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 Map Created: 1/12/2012



09-08-25-400-001
ZONED: C3
550 S. MAPLE RD.
SNYDER PROPERTIES II, LLC,
EQUIS CORPORATION

POINT OF BEGINNING
900°28'00"W
1050.00'

09-08-25-400-004
EX. BLDG.
ZONED: C3
570 S. MAPLE RD.
WILLIAM & SHERI DUFEK
EX. BITUMINOUS DRIVE
S89°32'00"E 153.00'

09-08-25-400-014
2536 W. LIBERTY ST.
LIBERTY & MAPLE L.L.C.
8.39 ACRES

EX. POND

EX. POND

NOTE:
SNOW SHALL NOT BE
PUSHED ON TO INTERIOR
LANDSCAPE ISLANDS
UNLESS DESIGNED FOR
SNOW STORAGE

MAPLE ROAD
(PUBLIC)

LIBERTY STREET
(PUBLIC)

LOT 6
#2527

LOT 1
#2509 W. LIBERTY ST

LOT 7
#2541

LOT 8
#2553

LOT 9
#2561

LOT 10
#2569

WEST LIBERTY HEIGHTS

SE COR.
SEC. 25
T.2S., R.5E.
SCIO TWP.



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Blue Heron Pond
W. Liberty, Ann Arbor, MI
Building Elevations
Building H

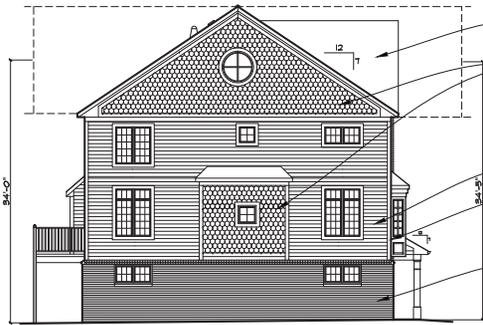
**J BRADLEY MOORE
& ASSOCIATES**
4844 Jackson Road, #150 Ann Arbor, MI 48103 (734) 930-1500

revisions	
date	reason

job 211270

drawn 09/kwk
date 11.20.12

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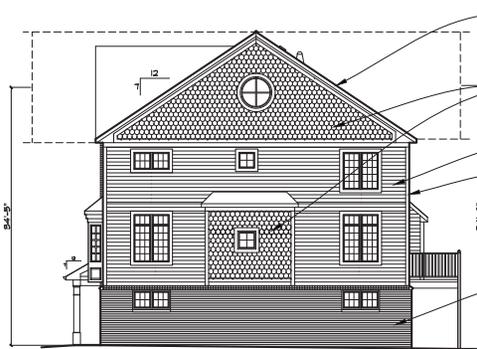


EAST ELEVATION - BLDG H
SCALE: 1/8" = 1'-0"

- ASPHALT SHINGLE ROOFING
- SCALLOP FIBER CEMENT SIDING
- SHAKE FIBER CEMENT SIDING
- FACE BRICK
- FIBER CEMENT LAP SIDING
- FIBER CEMENT TRIM
- FACE BRICK



FRONT ELEVATION - BUILDING H
SCALE: 1/8" = 1'-0"



WEST ELEVATION - BLDG H
SCALE: 1/8" = 1'-0"

- ASPHALT SHINGLE ROOFING
- SCALLOP FIBER CEMENT SIDING
- FIBER CEMENT LAP SIDING
- FIBER CEMENT TRIM
- FACE BRICK
- OPTIONAL LARGER WINDOW



REAR ELEVATION - BUILDING H
SCALE: 1/8" = 1'-0"



OFFICIAL SEAL

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Washtenaw Co., MI
Lawrence Kestenbaum
Clerk Register

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WEST TOWNE CONDOMINIUMS DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this 18 day of July, 2005, by and between the City of Ann Arbor, a Michigan Municipal Corporation, 100 North Fifth Avenue, Ann Arbor, Michigan 48107, hereinafter called the CITY, and Liberty & Maple L.L.C., a Michigan limited liability company, with principal address at 605 South Main Street, Suite 3, Ann Arbor, Michigan 48104, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as WEST TOWNE CONDOMINIUMS Planned Project Site Plan, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as WEST TOWNE CONDOMINIUMS, and desires planned project site plan and development agreement approval thereof, and

WHEREAS, the PROPRIETOR desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETORS will install these improvements prior to any permits being issued.

THE PROPRIETOR HEREBY AGREES

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water and sanitary sewer mains, public and private storm water management systems, and public sidewalks ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY departments as shall be reasonably required has been provided.

(P-2) To construct all improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the PROPRIETOR fails to construct the improvements, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above requiring it to commence and complete the improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR, if the PROPRIETOR does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.



(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) Prior to the issuance of building permits and recording the master deed, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5) To install all water mains, storm sewers, and sanitary sewers pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Maple or Liberty Roads such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along the frontage when such improvements are determined by the CITY to be necessary. A provision shall be included in the master deed of the project stating that if the CITY undertakes to establish a special assessment district to improve Maple or Liberty Roads, each unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

(P-7) To indemnify and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the PROPRIETOR, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-8) Existing landmark trees, shown on the site plan as trees to be saved, shall be maintained by the PROPRIETOR or the condominium owners association in good condition for a minimum of three years after granting of the final Certificate of Occupancy. Existing landmark trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after granting of the final Certificate of shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-9) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$26,000 to the CITY' Parks and Recreation Unit of Community Services prior to the issuance of building permits for improvements to South Maple Park, Hansen Park or other public parks in the area.

(P-10) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Unit of Community Services in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the PROPRIETOR to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the PROPRIETOR one year after the date of acceptance by the CITY.

(P-11) To create an association composed of all owners of West Towne condominiums, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for West Towne condominiums. The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, sidewalks, driveways, on-site storm water management system, and perpetual maintenance and protection of the wetland system and the 25-foot

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natural features open space associated with the wetland in a natural state, and all other common elements.

(P-12) To construct, repair and/or adequately maintain on-site storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-13) After construction of the private on-site storm water management system, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, or Association, at the address listed above, requiring it to commence and complete the maintenance stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR or Association if the PROPRIETOR or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the PROPRIETOR in the master deed.

(P-14) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-15) Prior to building permits being issued, to restrict by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care fertilizer to that which contains a low- or no-phosphorous analysis, in order to minimize the impact on the wetland contained within the site.

(P-16) To construct the buildings so that they are consistent with the elevations in the approved site plan. The two buildings that front Liberty Street shall use wood or board siding.

(P-17) To insulate Buildings B and C, which have frontage on Liberty, to increase the sound coefficient of the wall by any means acceptable to the CITY Building Official.

(P-18) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed prior to issuance of building permits.

(P-19) Prior to application for and issuance of certificates of occupancy, to complete the number of footing drain disconnects required under the CITY's Administrative Consent Order with the Michigan Department of Environmental Quality as indicated on the approved site plan. The PROPRIETOR may complete the footing drain disconnects on a prorated basis, calculated using the number and type of buildings for which certificates of occupancy are requested. Proration of the number of footing drain disconnects can occur on a building by building basis, but in no event shall the footing drains removed be less than what would be required for the building types seeking certificate of occupancy.

(P-20) Prior to application for and issuance of any permits, to enter into an Agreement with the CITY identifying specific public improvements to be made to provide sanitary sewer capacity for the

project, the timing for construction of the improvements, and the method(s) by which financing for the improvements will be secured. No certificates of occupancy shall be issued until such improvements have been completed to the satisfaction of the Public Services Area.

(P-21)

- A. To pay the CITY a total of \$90,829.51 to cover the improvement charges for sanitary sewer, storm sewer, water and sidewalk improvements benefiting the parcels with tax identification numbers 81-08-25-450-013 and 81-08-25-450-008 (the Parcels). The calculation and amount of each of the improvement charges are as follows:
1. Sanitary Sewer
 - a. 8" sanitary sewer in South Maple Road; District 340; constructed in 1959:
 $\$6.67/\text{front foot} \times 228 \text{ feet} \times 8.61 \text{ cost forwarding factor} = \$13,093.74.$
 - b. 8" sanitary sewer and curb & gutter on West Liberty; District 26; constructed in 2002:
 $30,512.04 \times 1.05 \text{ cost forwarding factor} = \$33,087.64.$
 - 2 Storm Sewer
 12' Storm sewer in South Maple Road; District 40; constructed in 1962:
 $\$524.13/\text{acre} \times 7.14 \text{ acres} \times 7.87 \text{ cost forwarding factor} = \$29,451.81.$
 3. Water
 20" water main in West Liberty; Non-District Job NA-604W; constructed in 1977:
 $\$6.00/\text{front foot} \times 536.8 \text{ feet} \times 2.66 \text{ cost forwarding factor} = \$8,567.33.$
 4. Sidewalk
 Concrete sidewalk along South Maple Road; District 20; constructed in 1987:
 $\$2.13/\text{SF} \times 1,995 \text{ SF} \times 1.56 \text{ cost forwarding factor} = \$6,628.99.$
- B. That upon closing on the purchase of one or both of the Parcels, to provide the CITY with a surety bond or with a letter of credit in the amount of \$90,829.51 to cover the total improvement charges for sanitary sewer, storm sewer, water and sidewalk improvements benefiting the Parcels, and shall maintain that bond or letter of credit until all obligations relative to payment to the CITY of improvement charges, including interest, are completed. The surety bond shall require the surety to give the CITY not less than 90 days advanced written notice of cancellation of the surety bond. In the event of cancellation of the surety bond, Liberty Maple LLC understands and agrees that it will obtain a replacement surety bond not less than 30 days prior to the cancellation date of the surety bond being canceled. The surety bond shall be substantially in the form attached, shall be with a surety acceptable to the City, and shall be approved as to form by the City Attorney.
- C. That Liberty & Maple LLC represents that 87 housing units will be developed on the Parcels and the City agrees that up to 87 units on the Parcels may be connected to City water and sanitary sewer.
- D. To pay the CITY a proportionate, i.e., one-eighty-seventh ($1/87^{\text{th}}$), share of the \$90,829.51 for each unit that is developed on the Parcels, which amount will become due as described in paragraphs 6 through 8 below. Liberty & Maple LLC and the CITY agree that the proportionate amount of the improvement charges due to the CITY for each unit will be \$1,044.02.
- E. That if fewer than 87 units have been developed and issued Certificates of Occupancy by the CITY within 24 months after the date when Liberty & Maple LLC first closed on the purchase of one or both of the Parcels, that the entire outstanding balance of the improvement charges shall be due and immediately payable in full to the CITY, including



all accrued interest, regardless of the number of units that have or have not been developed on the Parcels and issued Certificates of Occupancy.

- F. The CITY will charge and Liberty & Maple LLC agrees that it will pay to the CITY five percent (5%) per annum on the outstanding balance of the total improvement charges and any accrued interest, calculated and applied on a quarterly basis on September 1, January 1, April 1 and July 1 of each year.
- G. The CITY will invoice Liberty & Maple LLC on a quarterly basis for the improvement charges due for the preceding quarter on units that received a Certificate of Occupancy plus interest on the remaining unsold units as described in paragraph F above.
- H. To pay each invoice described in paragraph G within 30 days of the date of invoice.
- I. That PROPRIETOR understands and agrees that the CITY will not issue any Certificate of Occupancy for any unit on the Parcels if any prior invoice from the CITY to the PROPRIETOR for improvement charges for units on the Parcels remains unpaid in excess of 30 days after the date due.
- J. That in the event PROPRIETOR fails to pay any quarterly invoice, or fails to pay the outstanding balance of the improvement charges, including all accrued interest, that is due 24 months after the date when PROPRIETOR first closed on the purchase of one or both of the Parcels, the CITY, at its option, may make a demand on the surety bond or letter of credit for payment of the amount due.
- K. That PROPRIETOR understands and agrees that the outstanding improvement charges, including all accrued interest, are a lien on the property. PROPRIETOR further understands and agrees that nothing in this Agreement precludes the CITY from collecting such improvement charges in the same manner as any other improvement charges, including placement of said charges on the tax roll.

(P-22) Prior to the issuance of the first certificate of occupancy, to provide a wetland management plan for the protection and maintenance of the wetland system, including the removal of invasive species within the 25-foot natural features open space associated with the wetland and the area east of the wetland, and the planting of native material appropriate for the wetland system, to the satisfaction of the Public Services Area Administrator. The wetland management plan shall also include information on fertilizers and mowing practices, acceptable to the Land Development Coordinator. The wetland management plan shall be provided to the condominium association prior to the first certificate of occupancy and the condominium association shall be required to provide a copy to the owner of each condominium unit upon sale. The 25-foot natural features open space associated with the wetland system shall be maintained during construction and preserved in a naturalized condition after construction. Removal of invasive species and the planting of vegetation associated with the wetland system shall take place prior to the issuance of the final certificate of occupancy.

(P-23) PROPRIETOR is the sole titleholder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the persons signing below on behalf of PROPRIETOR have legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-24) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved development agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or development agreement.

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(P-25) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amounts shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount, in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-26) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the WEST TOWNE CONDOMINIUMS Planned Project Site Plan.

(C-2) To use the park contribution described above for improvements to South Maple Park, Hansen Park or other public parks in the area.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To indemnify and hold the PROPRIETOR harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the PROPRIETOR based upon or resulting from any acts or omissions of the CITY, its employees, agents, subcontractors, invitees or licensees in the maintenance or repair of any of the City's Improvements required under this Agreement and the approved site plan.

(C-5) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the PROPRIETOR and the CITY agree as follows:

(T-1) This agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors, heirs and assigns in ownership of the following described parcel:

A parcel of land located in the Southeast ¼ of Section 25, T2S, R5E, Scio Township, Washtenaw County, Michigan, being further described as follows: Commencing at the East ¼ corner of said Section 25 running S 00°28'00" W 1050.00 feet along the East ¼ line of Section 25, said line also being the centerline of Maple Road 66 feet wide and N 89°32'00" W 153.00 feet to the Point of Beginning; thence S 00°28'00" W 60.00 feet; thence S 89°32'00" E 153.00 feet; thence along the centerline of Maple Road and the East ¼ line of Section 25 S 00°28'00" W 170.00 feet; thence N 89°32'00" W 33.00 feet; thence S 00°28'00" W 90.00 feet; thence N 89°32'00" W 12.00 feet; thence S 00°28'00" W 308.55 feet; thence along the centerline of Liberty Road 66 feet wide S 75°26'00" W 536.80 feet; thence N 00°15'00" E 767.79 feet; thence S 89°32'00" E 413.05 feet to the Point of Beginning. (Assessor's Parcel Nos. 08-25-450-008 and 013)

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the PROPRIETOR, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

Anissa R. King
ANISSA R. KING

Amanda Allen
AMANDA ALLEN

CITY OF ANN ARBOR, MICHIGAN
100 North Fifth Avenue
Ann Arbor, Michigan 48107

By: John Hieftje
John Hieftje, Mayor

By: Jacqueline Beaudry
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Roger W. Fraser
Roger W. Fraser, City Administrator

Approved as to Form:

Stephen K. Postema
Stephen K. Postema, City Attorney



LIBERTY & MAPLE, L.L.C.
a Michigan limited liability company
605 South Main Street, Suite 3
Ann Arbor, Michigan 48104

Jill S. St. John
Jill S. St. John
Kerry L. Grimston
KERRY L. GRIMSTON

By: Leo D. Gonzalez, Member
By: Michael J. Concannon, Member

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this 1st day of November, 2005, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

Amanda Allen
AMANDA ALLEN
NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of ~~Washtenaw~~ Washtenaw
Notary Public, Jackson County, MI
Acting in Washtenaw County
My Commission Expires Jan. 2, 2008

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this 14th day of Sept., 2005, before me personally appeared Leo D. Gonzalez, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

Laurie Hogan Foondle
NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw
LAURIE HOGAN FOONDLE
NOTARY PUBLIC WASHTENAW CO., MI
MY COMMISSION EXPIRES Nov 29, 2007



ACS-5690530-AG-2005-9
Lawrence Kestenbaum, Washtenaw

02:09 P
11/30/05

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STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this 15th day of Sept., 2005, before me personally appeared Michael J. Concannon, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

Laurie Hogan Foondle

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

Laurie Hogan Foondle
NOTARY PUBLIC WASHTENAW CO., MI
MY COMMISSION EXPIRES Nov 29, 2007

DRAFTED BY AND AFTER RECORDING RETURN TO:

✓ Ann Arbor Planning & Development Services
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800

Blue Heron Pond Citizen's Participation Meeting Report

Date: 10/15/12 6:30 pm

Location: Weber's Inn, Jackson Rd., Ann Arbor, MI

At approximately 6:40 pm the project architect, J. Bradley Moore, made a presentation of the proposed redevelopment of the property located at the NW corner of Liberty and Maple roads - formerly known as Westowne Condominiums and now called Blue Heron Pond. He stated that the proposed new project will use existing on-site drives, grading and utility infrastructure and proposes the development of new town-home style residential buildings. Mr. Moore indicated that the proposed new project will reduce the total number of dwelling units and impervious area from the previously approved plan. The number of guest parking spaces as well as open space will be increased from the previous approved project. After the presentation, Mr. Moore opened the meeting for questions and comments from those in attendance.

A participant asked how many bedrooms the town homes would have. Mr. Moore responded, that some would be two bedroom units, some will be two bedroom units with a potential den, and others will be three bedroom units.

A participant asked approximately what size the dwellings would be. Mr. Moore responded, that the new units will range from approximately 1400 sq. ft. to 2100 sq. ft. depending upon whether or not the individual units were in buildings with walkout basement configurations, and/or attic loft spaces.

A participant asked about the set-back distance along Liberty Road and noted concerns about traffic noise for the potential residents in the buildings along Liberty Road. Mr. Moore indicated that high-quality construction materials techniques will be used in all the buildings to minimize the impact of external noises on the unit's occupants. He furthermore stated, that the setbacks along

Liberty road had been increased from the previously approved project by approximately 5ft.

A participant asked where the garages would be located for the individual units. Mr. Moore stated that they would be on the ground floor of the dwelling units with access to the existing on-site drives.

A participant stated that there are areas of the existing site where water ponds temporarily after rain events. Mr. Moore stated that final grading was never completed on the previously approved project and that after completion of the new proposed project, there would be no areas of ponding outside of the approved storm water retention areas.

A participant asked if the new proposed units would have below-grade basements. Mr. Moore responded they will generally not, with the exception of the two buildings where the existing grade would permit walk-out basements facing the pond.

A participant asked if there was currently any water in the on-site pond. Mr. Moore responded that the water level was currently very low and fluctuated with seasonal rain fall amounts.

A participant asked where the additional green space would be located. Mr. Moore used the site plan graphic representation to point out areas where there would be additional green space.

A participant inquired as to whether or not there would still be a walkway through the project around the existing pond, as shown on the previously approved site plan. Mr. Moore indicated that there would.

A participant asked if that walkway would be a public walkway. Mr. Moore responded that it would be a privately owned walkway, principally for the benefit of the project residence, but that it would not be gated or otherwise restricted.

A participant asked if the new project would be a "section 8" project. Mr. Moore stated that it would not, that these would be market rate rental units.

A participant stated that she thought the previous project was going to be a condominium project. Mr. Moore indicated that the newly proposed project would be a rental town home community but that if there were a demand, they could all be converted to condominiums in the future.

A participant asked if there would be common on-site amenities. Mr. Moore indicated that there would be no clubhouse or swimming pool type amenities; there would be outdoor recreation spaces, including things like picnic tables, and observation areas overlooking the pond.

A participant asked how many dwelling units would there be in each building. Mr. Moore indicated that would vary by building with a minimum of 4 dwelling units per building.

A participant asked if there would be any handicapped accessible units with living space entirely on a single level, or would they all be multi-level units. Mr. Moore responded there would be two accessible units; one type A and one type B unit in the newly proposed project.

A participant asked if any environment impact studies had been done on the property. Mr. Moore indicated that there had been a natural features impact analysis as part of the previously approved project and that the new project would not impact any of the identified natural features.

A participant indicated that he observed nesting waterfowl on the site. Mr. Moore indicated that all the nesting areas were within the project's protected natural features zone and that there would be no direct disturbance of this area by construction activities on this site.

A participant suggested the developer do a complete environmental impact study. Mr. Moore responded that the developer would comply with all rules, regulations and requirements by the city of Ann Arbor with respect to environmental impacts.

A participant asked if dogs would be used to chase away waterfowl. Mr. Moore responded that the developer had no plans to use dogs to chase waterfowl away

from the site, and that in fact, the waterfowl and natural features on-site were viewed as an attractive amenity.

An existing resident on the property stated that the owners and proposed developers of the new project respect the existing wildlife on the site.

A participant asked if all the required on-site storm water retention structures and fire hydrants were already installed. Mr. Moore indicated that they were.

A nearby resident and meeting participant indicated she was glad they were proposing such a nice project.

A participant indicated that the new building proposed for the site were prettier than those previously proposed. Mr Moore said "thank you".

A participant asked "when do you propose to start construction". Mr. Moore indicated that construction could not start until final site plan approval had been granted by city council and that the developer hoped they could commence construction next spring (spring of 2013).

A participant asked what the proposed rent rates would be on the new project. The developer indicated they anticipated rents ranging from \$900.00 to \$1,800.00 a month, depending on the size of the units.

A participant asked if there would be onsite dumpsters. Mr. Moore indicated that there would.

A participant asked if there had been traffic studies done. The civil engineer for the project indicated that it was not a big enough project to require a traffic study and that a traffic impact statement would be part of the require site plan submittal to the city.

A participant asked if city sanitary sewer capacity down-stream from the project would need to be increased. The civil engineer indicated that that work was still part of the proposed project.

A participant asked " in what direction does the sanitary sewer line flow". The civil engineer indicated that the flow was eastward and then southward from the project.

A participant asked about the graffiti which had previously been painted on the existing retaining wall in the project. Mr. Moore indicated that it had been removed and that it was the property owner's responsibility to see that any such graffiti was removed in a timely fashion.

A participant asked if the developer was going to continue to own and operate the development after it was constructed. The developer indicated that that was going to be the case.

A participant asked if dogs would be allowed in the development. The developer indicated that was not the intent.

A participant said that she thinks that the proposed project "looks great."

A participant stated that she was glad to see the developer propose a less intense use of the property than had previously been approved.

A participant asked about how the garage spaces will be configured within each building. Mr. Moore stated that all the garages would be single-car width and that some would be 2-car lengths in depth.

The meeting concluded at approximately 7:55 pm.