



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM



Date: February 17, 2020

To: Honorable Mayor and Members of the Troy City Council

From: Lori Grigg Bluhm, City Attorney
Julie Quinlan Dufrane, Assistant City Attorney

Subject: Open Space Preservation Easement for Chadbury Place

City Council approved a 16 unit cluster development proposed by Mondrian Properties, LLC at its May 20, 2019 Regular Meeting. As part of the approval process, the project, located south of Long Lake, between John R and Dequindre is zoned R-1B, one family residential. Under the City's Zoning Ordinance, a developer who chooses to use the Cluster Option must set aside dedicated open space through an irrevocable conveyance. (Troy Zoning Ordinance 10.04.D.7). As the development project nears completion, approval of the attached document must be accomplished so that it can be recorded with the Oakland County Register of Deeds and Certificates of Occupancy may be issued to new homeowners.

The City's Zoning Ordinance provides that the irrevocable conveyance must be perpetually maintained by the parties that have an ownership interest in the open space. It further provides that if the owners fail to maintain it such that it becomes a public nuisance, then the City may undertake maintenance and annually assess costs. Finally, the open space must forever remain open space as approved on the Final Site Plan, however, accessory structures are permitted as long as they do not exceed one percent (1%) of the open space area. The Zoning Ordinance also specifically requires that the conveyance shall prohibit dumping or storing of material or refuse, activity that causes soil erosion, cutting live plant material except for dying or diseased vegetation, and the use of motorized vehicles.

Recommendation

The City Attorney's office has reviewed the attached Open Space Preservation Easement and recommends approval of the Open Space Preservation Easement for Chadbury Place Site Condominiums.

Attachments:
City Council Minutes May 20, 2019
Open Space Preservation Easement

DECLARATION OF OPEN SPACE PRESERVATION EASEMENT

THIS DECLARATION OF OPEN SPACE PRESERVATION EASEMENT made this _____ day of _____, 2020, by and between Mondrian Properties, LLC, a Michigan limited liability company, whose address is 50215 Schoenherr, Shelby Township, Michigan 48315, (hereinafter the "Declarant").

RECITALS

A. Declarant owns a certain parcel of land situated in the City of Troy, Oakland County, Michigan, more particularly described in Exhibit A, attached hereto and made a part hereof (the "Property"). Declarant is developing a single family residential site condominium project known as Chadbury Place using the One-Family Cluster Option pursuant to Troy's Zoning Ordinance, Chapter 39, Section 10.04 which requires that certain portions of the Property be permanently preserved and protected as open space areas. Declarant desires to declare such an easement in order to preserve the required open space areas.

B. The designated open space areas (hereinafter the "Easement Areas") situated on the Property are more particularly described on Exhibit B, attached hereto and made a part hereof, the second page of which contains a drawing depicting the Easement Areas.

C. The designated Easement Areas fulfill the open space benefit consistent with Chapter 39, Section 10.04(D)(4)(a) of the City's Zoning Ordinance for the following reason:

a. Significant Natural Features. Preservation of significant natural features contained on the site, including preserving the existing trees by providing a buffer along Long Lake Road, and the adjoining developments to the south and the west of the

property. Also, the common area will be enhanced with landscaping and berms to create natural features buffer.

THEREFORE, Declarant hereby reserves, conveys and declares the following perpetual Open Space Preservation Easement, which shall be binding upon the Declarant, and its respective heirs, successors, assigns and/or transferees and shall be for the benefit of the City, and purchasers of the Property and their respective heirs, successors, assigns and/or transferees.

1. The purpose of this Open Space Preservation Easement is to establish and preserve a perpetual, non-exclusive easement over, under, and on the Easement Areas as identified and depicted in the site plan approved by the City of Troy and as areas that qualify as “open space” in accordance with Chapter 39, Section 10.04(D) of the One-Family Cluster Option. The designated Easement Areas shall be perpetually preserved as open space, and uses of the open space are limited to parks, playgrounds, fields, walking trails, nature areas and other approved uses as permitted in accordance with the One-Family Cluster Option.

2. The following uses and activities are expressly prohibited in the Easement Areas;

- a. dumping or storing any material or refuse,
- b. any activity that may cause risk of soil erosion or threaten any living plant material,
- c. cutting or removing live plant material except for the removal of dying or diseased vegetation,
- d. using motorized off-road vehicles,

3. The dedicated open space shall be perpetually maintained by any party or parties that have an ownership interest in the open space. Initially, the responsible party shall be Declarant who shall be responsible for maintenance of the open space until the Declarant assigns such responsibilities to an association of co-owners (the “Condominium Association” or the “Association) at which time the Association shall be

responsible for maintenance of the open space. The Easement Areas shall be maintained and repaired in the condition required by the final approved site plan, including but not limited to maintenance of landscaped areas and amenities, if any, therein. Once the master deed for the condominium project is recorded and the Association of co-owners is incorporated to own and operate the condominium project including the dedicated Easement Areas, it shall also be the association's responsibility to maintain and repair the Easement Areas.

4. This Open Space Preservation Easement does not grant or convey to any member of the general public any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Declarant or successors, the City of Troy and its authorized employees and agents may enter upon and inspect the Easement Areas to determine whether the Easement Areas is being maintained in compliance with the terms of this Open Space Preservation Easement.

5. The Easement Areas consist mainly of lawn areas. The Easement Areas shall be carefully inspected on a weekly basis initially by the Declarant, and then by the successors in interest. The Declarant shall immediately remove any garbage and debris that is found in the Easement Areas, and after a transfer of property to an Association, this task shall be performed by the Declarant's successor. A professional landscaping company shall be hired to mow the lawn areas, and the lawn shall be maintained in accordance with all City Ordinances and shall be cut at a minimum on a weekly basis (or more often if necessary) during the appropriate seasons when the lawn will be growing.

6. In the event that the Declarant or the successor Association shall at any time fail to carry out the responsibilities specified within this Open Space Preservation Easement and/or fail to preserve and/or maintain the open space areas in reasonable order and condition such that it becomes a public nuisance, the City may serve written notice upon the responsible party, either the Declarant or the Association setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period. If the identified deficiencies are not timely cured administratively, the City may issue citations for violation of any City Code. If the deficiency concerns any provision of this Open

Space Preservation Easement then, after a reasonable time allowed for curing any deficiencies, a hearing may be held before the City Council, or such other Council, body or official delegated by the City Council, for the purpose of allowing the responsible Declarant or Association to be heard as to why the City should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council or other body or official designated to conduct the hearing determines that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall have the power and authority but not the obligation to enter upon the Property, or cause its agents or contractors to enter upon the Property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the responsible Declarant or Association, and such amount shall constitute a lien on an equal pro rata basis as to all of the units of the condominium within which the Easement Areas are located. In the event one or more of the affected Easement Areas are not located within a condominium, the lien shall be against the portion of the Property in which the Easement Area is located. The City may require the payment of such monies prior to the commencement of work. If Declarant or Association has not paid the billed costs and expenses within 30 days all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each unit, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the responsible Declarant/Association, and, in such event, the responsible Declarant/Association shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

7. Except as provided below, this Declaration may not be amended or otherwise modified without prior approval of Troy City Council. This Declaration is an integral component of the City's approval of the site plan

and development of the Condominium Project. Accordingly, the City shall be deemed a third party beneficiary of this Declaration and the City (or other governmental entity succeeding to the authority of the City (e.g. if the City is annexed into or becomes part of a city)) shall have the right to enforce the covenants and restrictions set forth in this Declaration. For purposes of the foregoing, the developer of the Condominium Project (Declarant) shall be deemed to be the owner of the Condominium Project during the period such developer owns any portion of the Condominium Project (including units therein) and thereafter the Condominium Association shall be deemed to be the owner of the Condominium Project for purposes of this subparagraph, upon demonstration of the transfer of property. An amendment to this Declaration shall be effective upon the recordation of such amendment with the Oakland County, Michigan Register of Deeds.

8. This Open Space Preservation Easement has been made and given for a consideration of a value less than One Hundred (\$100.00) Dollars, and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MCL 207.526(6)(a); MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax, pursuant to MCL 207.505(a); MSA 7.456(5)(a).

9. This Open Space Preservation Easement shall be recorded with the Oakland County Register of Deeds. Mondrian Properties, LLC shall be responsible for recordation of this Easement including all costs and applicable fees.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

DECLARANT

MONDRIAN PROPERTIES, LLC,
a Michigan limited liability company

By: _____
Joseph Maniaci, Manager

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day
of _____, 2020, by Joseph Maniaci, as Manager of Mondrian
Properties, LLC, limited liability company, on its behalf.

Notary Public
Acting in _____ County, Michigan
My Commission Expires: _____

When Recorded Return To:

Mark J. Abdo, Esq.
12900 Hall Road, Suite 403
Sterling Heights, Michigan 48313
Office Telephone number: (586) 412-1900

E-3 Preliminary Site Plan Review (File Number SP JPLN2018-0001 – Proposed Chadbury Place, South of Long Lake, Between John R and Dequindre (Parcel #88-20-13-127-020), Section 13, Currently Zoned R-1C (Introduced by: Brent Savidant, Planning Director)

The Mayor opened the Public Hearing. The Mayor closed the Public Hearing after receiving no Public Comment.

Resolution #2019-05-054
Moved by Baker
Seconded by Henderson

WHEREAS, The City is in receipt of a proposed preliminary site plan application for Chadbury Place, a 16-unit detached single family condominium cluster development; and,

WHEREAS, The base density base under the R-1C (One-Family Residential) District as determined by the submission of a parallel plan is 14 units; and,

WHEREAS, As per the cluster ordinance, the applicant is seeking 2 additional units above the base density by providing additional open space above the 20% minimum, for a total of 16 units; and,

WHEREAS, In exchange for 2 additional units the applicant is able to provide 24% open space; and,

WHEREAS, The proposed cluster development was recommended for approval by the Planning Commission by a 7-0 vote;

THEREFORE, BE IT RESOLVED, That Troy City Council hereby **APPROVES** the proposed Chadbury Place Site Condominium, 16-units/lots, located south of Long Lake between John R and Dequindre, Section 13, currently zoned R-1C (One Family Residential) District, subject to the following:

1. Approval of Declaration of Open Space Preservation Easement prior to Final Site Plan approval.

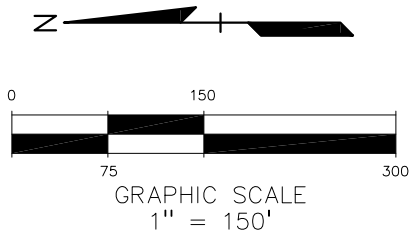
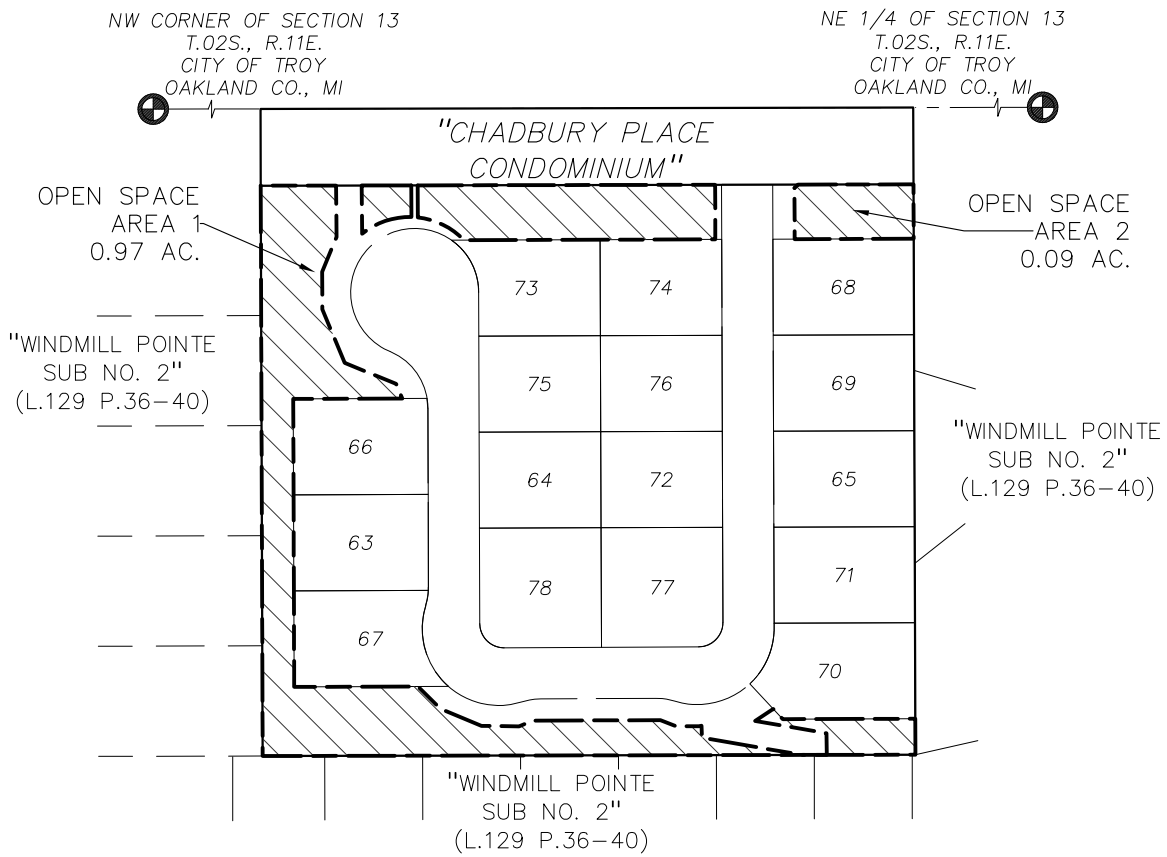
Yes: All-7
No: None

MOTION CARRIED

F. PUBLIC COMMENT FOR ITEMS ON THE AGENDA FROM TROY RESIDENTS AND BUSINESSES:

G. CITY COUNCIL/CITY ADMINISTRATION RESPONSE/REPLY TO PUBLIC COMMENT:

EXHIBIT B SKETCH OF OPEN SPACE EASEMENT



CLIENT:
MONDRIAN PROPERTIES
50215 SCHOENHERR
SHELBY TOWNSHIP, MI 48315

SCALE: 1" = 150'
DATE: ~~10-14-19~~
~~2-25-18~~

JOB No: 2018237
DWG. No: 1 of 2

PEA, Inc.
2430 Rochester Ct, Ste 100
Troy, MI 48083-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

LEGAL DESCRIPTIONS

LEGAL DESCRIPTION

(As Surveyed by PEA, Inc.)

PARCEL ID 20-13-127-020

Land in the City of Troy, Oakland County, Michigan, described as follows:
 Part of the Northwest 1/4 of Section 13, Town 2 North, Range 11 East, City of Troy, Oakland County Michigan, described as Commencing at the North 1/4 Corner of said Section 13, thence along the north line of said section S89°53'00"W, 493.35 feet, previously recorded as 492.80 feet; thence S00°11'12"E, 60.00 feet to the south line of East Long Lake Road (120 ft. wide) and the Point of Beginning; thence the following three courses along "Windmill Pointe Sub No. 2" as recorded in Liber 129, Page 36, Oakland County Records, S00°11'12"E, 445.60 feet and S89°53'00"W, 510.00 feet and N00°11'12"W, 445.60 feet to the aforementioned south line the East Long Lake Road; thence along said south line, N89°53'00"E, 510.00 to the Point of Beginning.
 Containing 5.217 acres of land more or less.

LEGAL DESCRIPTION

(per PEA, Inc.)

OPEN SPACE EASEMENT "A"

An open space easement over part of the Northwest 1/4 of Section 13, Town 2 North, Range 11 East, City of Troy, Oakland County Michigan, said easement being more particularly described as: Commencing at the North 1/4 Corner of said Section 13; thence along the north line of said section S89°53'00"W, 493.35 feet; thence S00°11'12"E, 60.00 feet to the south line of East Long Lake Road (120 ft. wide) to the POINT OF BEGINNING; thence along "Windmill Pointe Sub No. 2" as recorded in Liber 129, Page 36, Oakland County Records, S00°11'12"E, 42.50 feet; thence S89°48'48"W, 87.00 feet; thence N00°11'12"W, 42.61 feet to the aforementioned south line of East Long Lake Road; thence along the said south line, N89°53'00"E, 87.00 feet to the POINT OF BEGINNING.

OPEN SPACE EASEMENT "B"

An open space easement over part of the Northwest 1/4 of Section 13, Town 2 North, Range 11 East, City of Troy, Oakland County Michigan, said easement being more particularly described as: Commencing at the North 1/4 Corner of said Section 13; thence along the north line of said section S89°53'00"W, 493.35 feet; thence S00°11'12"E, 60.00 feet to the south line of East Long Lake Road (120 ft. wide); thence along said south line, S89°53'00"W, 165.00 feet to the POINT OF BEGINNING; thence S00°11'12"E, 42.68 feet; thence S89°48'48"W, 174.36 feet; thence C1) 107.72 feet along an arc of a curve to the left, having a radius of 65.00 feet and a chord that bears N86°29'12"W, 95.81 feet; thence S84°07'48"W, 12.05 feet; thence C2) 135.03 feet along an arc of a curve to the left, having a radius of 73.00 feet and a chord that bears S14°22'49"E, 116.59 feet; thence C3) 21.68 feet along an arc of a curve to the right, have a radius of 25.00 feet and a chord that bears S42°31'50"E, 21.01 feet; thence S89°48'48"W, 80.95 feet; thence S00°11'12"E, 225.00 feet; thence N89°48'48"E, 90.44 feet; thence C4) 108.38 feet along an arc of a curve to the left, having a radius of 83.00 feet and a chord that bears S70°26'25"E, 100.85 feet; thence C5) 7.71 feet along an arc of a curve to the right, having a radius of 25.00 feet and a chord that bears N80°58'54"E, 7.68 feet; thence N89°48'48"E, 90.02 feet; thence C6) 7.57 feet along an arc of a curve to the right, having a radius of 25.00 feet and a chord that bears S81°30'41"E, 7.54 feet; thence C7) 87.25 feet along an arc of a curve to the left, having a radius of 83.00 feet and a chord that bears N77°03'02"E, 83.28 feet; thence S43°03'46"E, 14.77 feet; thence N89°48'48"E, 103.48 feet; thence the following three courses along "Windmill Pointe Sub No. 2" as recorded in Liber 129, Page 36, Oakland County Records, S00°11'12"E, 28.10 feet and S89°53'00"W, 510.00 feet and N00°11'12"W, 445.60 feet to the aforementioned south line of East Long Lake Road; thence along said south line, N89°53'00"E, 345.00 feet to the POINT OF BEGINNING.



PEA, Inc.

2430 Rochester Ct., Ste. 100
 Troy, MI 48063-1872
 t: 248.689.9090
 f: 248.689.1044
 www.peainc.com

CLIENT: MONDRIAN PROPERTIES 50215 SCHOENHERR SHELBY TWP, MI 48315	SCALE: 1" = 80'	JOB No: 2018237
	DATE: 2-7-20	DWG. No: 2 of 2