

AGENDA REPORT

TO: City Council
FROM: Charles Ahl, Acting City Manager
John Baker, Greene Espel, PLLP
SUBJECT: Carver Crossing Development – Consider Litigation Settlement
DATE: May 7, 2008

INTRODUCTION/SUMMARY

The City Council tabled action on the Carver Crossing Development [also known as CoPar Litigation] at their May 5th meeting in order to provide CoPar time to react to potential additional considerations in the settlement. We are providing the report from Mr. Ekstrand on the planning issues. That report is unchanged from the packet of information included with the May 5th agenda report.

As background, the City Council previously denied a proposed 191-unit proposal for Carver Crossing. That denial occurred on September 28, 2006. The developer of that plan, CoPar Companies, litigated the denial decision. The court proceedings on that litigation are scheduled to begin on June 2, 2008. The consideration of this item is to settle the litigation prior to the beginning of the court proceedings.

The City Council directed that this revised plan be presented to the Planning Commission for a recommendation. Considerable discussion and debate surrounded whether the revised plan was a new proposal or a 'hybrid' proposal. Mr. Baker and Mr. Knatrud have indicated that the March 31, 2008 plans should be considered a 'hybrid' proposal, specifically because no new fees were collected and a full review was not completed. At the May 5th meeting, the CoPar representatives acknowledged that they recognize that the plan was submitted for settlement purposes and stated that no litigation would result from this revised plan. The staff is also attempting to contact the DNR on the 'hybrid' plan to see if they have any concerns.

The staff and attorneys are recommending that if the Council chooses to accept the settlement that approval be in the form of a resolution that establishes the terms of the settlement. Attached is a the resolution establishing the terms of the settlement. These terms have been negotiated with CoPar on the final language for dismissal of the litigation. This resolution calls for a development contract that is consistent with the development plans of the application and with financial terms if approved by the City Council contemporaneously with the applications, and the effectiveness of this approval is conditioned upon the parties' execution of such development agreement. If the Council wishes to settle the litigation, the first action will be the three motions to approve the development plans as indicated within the planner's report with revisions. The current settlement is not a 165 unit proposal; however, the staff is comfortable with granting preliminary plat and PUD approval without further review of the final plans. The resolution calls for the City to approve the development plans after a review of the final documents and submittals from the developer at the proposed development level as shown.

Proposed Settlement Conditions

- The plan is reduced to 174 units from the original 191 unit proposal. The 174 units was arrived at in recent negotiations. CoPar has indicated that since the agreement was a 50-50 split, that if the City did not wish to participate in a density reduction, that they would reduce their development by ½ of the 26 unit development. Thus, half of 26 is 13, which is the reduction from 191 to 178. Additional considerations, such as City administration of the project and providing City bonding have resulted in the reduction of 4 additional units. The final plan would indicate the addition of these 9 lots within the same general footprint of the 165-unit plan. CoPar will be providing a preliminary plat and development plans consistent with this 174 unit plan that has no impact on the footprint proposed in the 165-unit plan.
- The portion of the site, shown as Conservation Easements remains and provides a 300-foot protected corridor for Fish Creek.
- Building pads are indicated to be 40X60 which would also allow for a 20-foot deck without impacting the Conservation Easement area. The pads are at a 25-foot setback from the public roads. The new units will be shown to not significantly impact the overall site plan development area.
- The road right of way for a majority of the roads is shown as 50-foot in width. The streets are 24-foot in width and include a 10-foot wide trail, or 6-foot sidewalk, along a majority of the streets.
- No median exists on Henry Lane across Fish Creek. A guard rail system for protection from vehicles potentially leaving the 494 Corridor will be designed by a register engineer to MnDOT specifications.
- CoPar Companies have agreed to limit 2008 construction to the northern portion except that they would build across Fish Creek to and including the roundabout. They would be allowed to build one or two model homes on the south side but would hold off on anything major for the southern portion until after Maplewood conducts a referendum, or explores other options for purchasing portions of the southern area. CoPar indicated that they might want to grade in a couple of trails that could also be used to show prospective lot buyers of general lot locations until after the purchase decisions discussions in 2008.
- CoPar has shown a second exhibit [Attachment 7] that included 16 lots on the far southwestern side of the site highlighted to be on hold for the Referendum. The submittal shows the reduced site as it would be reduced if a Referendum is passed for 149 units. The overall site plan with a referendum passed and combined with Conservation Easement coverage and public dedication creates a site where 50% of the site would be “green”. The City could consider exploration of a referendum or explore other financing issues for the purchase of major portions of this southern area during the remainder of 2008. CoPar has agreed to extend the date for closing on purchases in the southern area to June 30, 2009. Additionally, CoPar has agreed to a full PAC fee charge of \$257,200 [174 X \$3,300] that could be used for purchase of area within the southern portion of the site.
- CoPar indicated that their willingness for sale of property in the southern area is contingent upon reaching a litigation settlement at this time. Should the plan be denied, they indicated that they will build the entire 191 unit plan without sales to the City for further open space considerations.

The financial proposals and the conditions of settlement are:

- City agrees to prepare all public improvements as a City project.
 - All design, engineering by the city.
 - City will assess the public improvements attributable to the development at the exact interest rate of the bond sale over a 15-year term.
 - CoPar will have joint approval over final design.
 - There we be **no** cost sharing of the developer responsibilities for the improvement costs. The City's role will be to implement and supervise the installation of the eventual public improvements at CoPar's expense.
 - The City may consider providing improvements for future utility extensions as part of the project, at Maplewood's expense.

- The following will be part of a final development agreement:
 - Carver Crossing development shall be approved as proposed in plans submitted on March 31, 2008, and which shall be revised to reflect 174 units.
 - CoPar reserves the provision to retain vested interests in Carver Crossing, which provides that Maplewood recognizes that the project will be phased in construction and development.
 - CoPar agrees that Phase 1 will not include anything beyond the roundabout in the southern portion of the development in calendar year 2008.
 - CoPar will agree to the identified 16 lots in the southern phase, shown as referendum lots are available for purchase by the city as follows:
 - First 16 lots: \$150,000 per lot
 - After 16 lots: appraised value, with CoPar having right of refusal
 - CoPar agrees that if the City purchases at least 1 lot under this provision, all green space identified in the March 31, 2008 plans shall be dedicated to the City at the cost of \$1.00 and all other valuable considerations, which shall be at the City's option after careful consideration regarding the benefits of City ownership and control of this open space versus the expense of long-term maintenance.
 - CoPar agrees that the City may choose to declare / identify trail corridors through the open space areas and conservation easement areas. CoPar and any future owners/builders agree to disclose to all potential lot purchasers this important future construction fact to avoid confusion on future intents to improve the open space area.
 - The City agrees to approve the preliminary plat, Conditional Use Permit for a Planned Unit Development and the Vacation of Existing Easements consistent with the plans dated March 31, 2008 and as revised to reflect the addition of 9 units to increase the number of units within the development from 165 to 174. Further, the City and CoPar agree that the general footprint of the site development shall not be substantially changed by more than 1.0% based upon a disturbed area calculation in the addition of the new units.
 - Lot 4, Block 1 is eliminated to address the wetland buffer and tree removal concerns expressed within the staff report. Lot 3 has the building pad turned sideways. An additional lot has been added in the northern section to compensate for this elimination.

RECOMMENDATION

If the City Council chooses to settle the litigation with CoPar Companies through this revised proposal, the necessary action [individual motions required] is:

1. Approve the Conditional Use Permit for a 174-unit planned unit development as provided beginning on Page 14 of Mr. Ekstrand's planning report, with direction that all reference to 165-units shall be revised to 174 units.
2. Approve the resolution vacating the unused easements within Carver Crossing as noted beginning on the bottom of Page 15 of Mr. Ekstrand's report.
3. Approve the Carver Crossing Preliminary Plat for a 174-unit plan and the date of the preliminary plat shall be referenced as submitted on May 12, 2008, as noted beginning on Page 16 of Mr. Ekstrand's report, with direction that all reference to 165-units and plans dated March 31, 2008 shall be revised to 174-units and plans dated May 12, 2008.
4. Adopt the attached resolution that approve the terms of the financial settlement by adopting the following statement:
 - a. CoPar Companies and the City of Maplewood intend to enter into a development agreement that is consistent with the development plans of the application and with financial terms that acknowledge that the City has approved a 174-unit development plan through the approval of a conditional use permit for a Planned Unit Development, the vacation of certain easements, approval of a preliminary plat for a 174 unit development that is generally consistent with a plan submitted by CoPar Companies, dated March 31, 2008, except the following:
 - i. The 174 unit plan shall not impact more general lot area than 1% of the site plan shown for the 165 unit plan.
 - ii. There shall be no City contribution to the development of the public improvements attributable to CoPar Companies development of the 174 unit plan.

Attachments:

1. Resolution of Litigation Settlement
2. Carver Crossing Planning Report

RESOLUTION
APPROVING SETTLEMENT CONCEPTS AND DIRECTING PREPARATION OF A
DEVELOPMENT AGREEMENT CONSISTENT WITH THOSE CONCEPTS
RECITALS

- A. Whereas, this Resolution is being acted upon by the Council only after consideration and approval by the Council of the following (hereinafter described as “the Approvals”):
1. A conditional use permit (“CUP”) for a 174-unit planned unit development (“PUD”) known as Carver Crossing;
 2. A resolution vacating the unused easements on Carver Crossing; and
 3. A Preliminary Plat for Carver Crossing.
- B. Whereas, as part of settlement negotiations between representatives of CoPar Development, LLC (“the Developer”) and the City, the City’s representatives persuaded the Developer’s representatives to revise their proposed development and to otherwise agree, as a condition to approval of the applications referenced above, to the following:
1. reducing the proposed amount of overall density from 191 units to 174 units,
 2. providing a means by which the overall density would be further reduced to 158 units by granting the City an option to purchase, at a cost of \$150,000 per lot, up to a total of \$2,400,000, the 8.3 acre southwesterly slope area and 25.5 acres of integrated open space (as depicted on a map already provided to the City), including 16 specified building lots, plus outlots with the areas specified,
 3. providing that if the City purchases at least one lot under this option provision, all green space identified in the March 31, 2008 plans shall be dedicated to the City, at the city’s option, at a cost of \$1.00,
 4. providing the City with the further opportunity to purchase, subject to CoPar’s right of refusal, additional platted lots (adjacent to one or more lots designated in the 16-lot option), at their appraised value,
 5. providing the City with an opportunity to finance its exercise of one or both of these options, whether through referendum vote, grants from other entities, or a combination thereof, by leaving the period to exercise the options and enter into a purchase agreement open through calendar year 2008 (and the period in which to close on the purchase open until June 30, 2009), refraining from commencing development of that portion of Carver Crossing that is south of Fish Creek and south of the roundabout during calendar year 2008 (except for grading trail areas and building up to two model homes in that area), and further refraining from developing that area between January and June 2009 if the City timely exercises its option in 2008.
 6. providing a 300-foot protected corridor for Fish Creek through the use of conservation easements,
 7. designing building pads so as to allow for a 20-foot deck without impacting conservation easements,

8. providing the City with the opportunity to declare or identify trail corridors through the open space areas and conservation easement areas that will be disclosed to all potential lot purchasers to avoid confusion regarding future intentions to improve the open space area,
 9. providing a road right of way for a majority of the roads that is 50 feet width, streets 24 feet in width and with a ten-foot wide trail or suitable sidewalk along a majority of the streets, and
 10. adding a guard rail or equivalent protection east of Henry Lane for protection from vehicles potentially leaving the 494 Corridor.
- C. Whereas, in order for the Developer to agree to dismiss its suit, and to these modifications to the proposed development, it would be necessary for the City to agree to the following:
1. Prepare all public improvements as a City project but with no financial contribution by the City to the infrastructure costs;
 2. Assess the improvements at the exact cost of the bond sale over a 15-year term;
 3. Allow the Developer to have joint approval over the final design;
 4. Assess the Carver Crossing development property on an annual basis for any and all improvements to be constructed by agreement with CoPar in that calendar year; and
 5. Except for phased final approvals as so required by approvals by the City in May 2008, refrain from imposing and enforcing further review or development time constraints, limitations, or encumbrances on the Developer or the project.
 6. Consider providing improvements for future utility extensions as part of the project, at Maplewood's expense.
- D. Whereas, the City and the Developer agree that the Developer will pay a \$574,200 fee in lieu of park dedication; payment of this fee may be considered as part of the City's option to purchase properties in the southern portion of the development, but the amount shall become due no later than June 30, 2009. The Developer shall have the option prior to June 30, 2009, to assign this park dedication charge to the individual lots as a building permit fee at the current park dedication charge in effect at the time of the building permit issuance.
- E. Whereas, if the City grants the Approvals and adopts this Resolution, the Developer and the City intend to enter into a development agreement that is consistent with the development plans of the application and with the terms of this Resolution.
- F. Whereas, the effectiveness of the approval of the applications and of the obligations under of this Resolution are conditioned upon the parties' execution of such development agreement.
- G. Whereas, such development agreement shall be presented to the City Council at its first regular meeting in June 2008 following adoption of this Resolution.

- H. Whereas, such development agreement shall include findings consistent with the actions taken by the City regarding the Approvals.
- I. Whereas, litigation is currently pending in Ramsey County District Court arising from the City's September 28, 2006 denial of applications for a 191-unit version of a development at the same general location, with a summary judgment hearing currently scheduled for June 2, 2008; and
- J. Whereas, the parties understand that upon the City's issuance of the Approvals and authorization of the execution of a development agreement that is consistent with the terms of this Resolution, the Developer will dismiss with prejudice the pending suit, and the City and the Developer will agree to mutual releases of the parties and their agents.

COUNCIL ACTION

ACCORDINGLY, IN RELIANCE UPON THE ASSERTIONS OF THE DEVELOPER AS SPECIFIED ABOVE, THE CITY COUNCIL OF THE CITY OF MAPLEWOOD HEREBY RESOLVES AS FOLLOWS:

- 1. The Council directs staff and attorneys for the City to prepare and present to the Council at its first regularly scheduled council meeting in June 2008 a development agreement that is consistent with the Recitals of this Resolution as set forth above.