

## ORDINANCE NO. F-1809

### AN ORDINANCE AMENDING THE ORIGINAL AND SUBSEQUENT AMENDED ORDINANCES AND GRANT OF A SPECIAL USE PERMIT TO ALLOW THE CONSTRUCTION AND USE OF TWO APARTMENT BUILDINGS IN LIEU OF THE PREVIOUSLY APPROVED SENIOR HOUSING DEVELOPMENT

**WHEREAS**, on September 20, 2004, the Wheaton City Council approved Ordinance No. F-0950, "AN ORDINANCE REZONING PROPERTY FROM I-1 INSTITUTIONAL TO R-7 RESIDENTIAL AND GRANTING A SPECIAL USE PERMIT FOR A RESIDENTIAL PLANNED UNIT DEVELOPMENT FOR PROPERTY BORDERED BY THE ILLINOIS PRAIRIE PATH RIGHT-OF-WAY, WASHINGTON STREET, NAPERVILLE ROAD, WILLOW AVENUE AND REBER STREET (NATIONAL LOUIS UNIVERSITY/COURTHOUSE PROPERTY)" ("Original Ordinance") recorded as Document Number R2004-271416 on October 21, 2004 in the office of the DuPage County Recorder; and

**WHEREAS**, on March 21, 2005, the Wheaton City Council approved Ordinance No. F-1014, "AN ORDINANCE AMENDING ORDINANCE NO. F-0950 ENTITLED AN ORDINANCE REZONING PROPERTY FROM I-1 INSTITUTIONAL TO R-7 RESIDENTIAL AND GRANTING A SPECIAL USE PERMIT FOR A RESIDENTIAL PLANNED UNIT DEVELOPMENT FOR PROPERTY BORDERED BY THE ILLINOIS PRAIRIE PATH RIGHT-OF-WAY, WASHINGTON STREET, NAPERVILLE ROAD, WILLOW AVENUE AND REBER STREET (NATIONAL LOUIS UNIVERSITY/COURTHOUSE PROPERTY)" ("Subsequent Amended Ordinance") recorded as Document Number R2005-074148 on April 12, 2005 in the office of the DuPage County Recorder; and

**WHEREAS**, on January 3, 2006, the Wheaton City Council approved Ordinance No. F-1121, "AN ORDINANCE GRANTING FINAL PUD APPROVAL FOR THE COURTHOUSE SQUARE PROJECT" ("Subsequent Amended Ordinance") recorded as Document Number R2006-030243 on February 17, 2006 in the office of the DuPage County Recorder; and

**WHEREAS**, on November 20, 2006, the Wheaton City Council approved Ordinance No. F-1230, "AN ORDINANCE AMENDING THE PLANNED UNIT DEVELOPMENT FOR THE COURTHOUSE SQUARE PROJECT BRICK SIZE" ("Subsequent Amended Ordinance") recorded as Document Number R2006-237031 on December 11, 2006 in the office of the DuPage County Recorder; and

**WHEREAS**, on January 16, 2007, the Wheaton City Council approved Ordinance No. F-1247, "AN ORDINANCE AMENDING THE PLANNED UNIT DEVELOPMENT FOR THE COURTHOUSE SQUARE PROJECT - LOT 11 LEGAL DESCRIPTION CORRECTION" ("Subsequent Amended Ordinance"); and

**WHEREAS**, on June 7, 2010, the Wheaton City Council approved Ordinance No. F-1495, "AN ORDINANCE AMENDING VARIOUS PLANS AS THEY PERTAIN TO THE

TOWNHOME PORTION OF THE COURTHOUSE SQUARE PROJECT" ("Subsequent Amended Ordinance"); and

**WHEREAS**, on October 1, 2012, the Wheaton City Council approved Ordinance No. F-1666, "AN ORDINANCE AMENDING THE ORIGINAL AND SUBSEQUENT AMENDED ORDINANCES AND TO GRANT A SPECIAL USE PERMIT TO ALLOW THE CONSTRUCTION AND USE OF A SENIOR HOUSING DEVELOPMENT ON A PORTION OF LOT 9, LOT 10, OUTLOT G AND OUTLOT F OF THE EXISTING COURTHOUSE SQUARE PROJECT IN LIEU OF THE PREVIOUSLY APPROVED CONDOMINIUM BUILDING #2 AND #3" ("Subsequent Amended Ordinance"); and

**WHEREAS**, on January 21, 2014, the Wheaton City Council approved Ordinance No. F-1755, "AN ORDINANCE AMENDING THE NUMBER OF TOWNHOMES WHICH MAY BE CONSTRUCTED AS PART OF THE COURTHOUSE SQUARE PROJECT" ("Subsequent Amended Ordinance"); and

**WHEREAS**, following the enactment of the Original Ordinance and the Subsequent Amended Ordinances, applications have been made to amend the existing Courthouse Square PUD to allow the construction and use of two apartment buildings in lieu of the previously approved senior housing development. The application further requests a minor re-subdivision of existing Lot 9 and Outlot G, all on property commonly known as 250 South Naperville Road and 245 East Willow Avenue, Wheaton, IL 60187; and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton City Council on Monday, July 14, 2014; and

**WHEREAS**, the Wheaton City Council has, in its legislative capacity and discretion, reviewed all of the applicable standards for special uses and planned unit developments as set forth in the Wheaton Zoning Ordinance and has legislatively determined within its home rule authority, that the aforesaid applications and proposed apartment development is consistent with and satisfies said standards and is further consistent with and will promote the objectives of the City for the Courthouse Square Project; and

**WHEREAS**, there is a Consent Decree (hereinafter "Consent Decree") entered in DuPage Circuit Court case; Gorski et. al. vs Focus Courthouse LLC et. al. 2012 CH 4918, which contains a paragraph Z which may impact the dates set forth in Section 7 of this Ordinance

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

**Section 1:** That the foregoing recitals are incorporated herein as if fully set forth as the legislative determinations of the City Council of the City of Wheaton.

**Section 2:** That Ordinance No. F-1666 is hereby repealed and rescinded in its entirety.

**Section 3:** The Subject Property, legally described in said Exhibit A, has been and continues to be zoned in the R-7 Residential Zoning District classification, with a special use permit for a Planned Unit Development.

**Section 4:** The Original Ordinance and the Subsequent Amended Ordinances for the Planned Unit Development are hereby further amended, to grant a special use permit to allow the construction and use of two apartment buildings (containing a total of 153 units) in lieu of the previously approved senior housing development, and a minor re-subdivision of existing Lot 9 and Outlot G, all on property commonly known as 250 South Naperville Road and 245 East Willow Avenue, Wheaton, IL 60187 is hereby approved but only in substantial conformance with the following plans entitled "Courthouse Square Resubdivision Phase 5" prepared by Spaceco, Inc., Sheets 1 and 2, dated June 3, 2014; "Courthouse Square – Residential Development – Lots 9 & 10 and Outlots F & G, Site Plan, Ground Floor Plan, Lower Level – Parking Plan, Second Floor Plan, Typical Residential Floor Plan, Landscape Plan, Signage Plan prepared by Antunovich Associates, dated June 6, 2014, and Building Elevations", prepared by Antunovich Associates, dated July 30, 2014 and "Courthouse Square – Residential Development - Lots 9 & 10 and Outlots F & G, 5<sup>th</sup> Floor – Material Sketches," prepared by Antunovich Associates, dated August 8, 2014 which are attached hereto and incorporated herein as Exhibit B, and subject to the following conditions and requirements:

1. The building drop-off/pickup and loading areas of the site plan shall be revised to reduce the size and number of passenger unloading/loading and garbage pick-up areas. Said revised site plan shall be subject to the reasonable approval of the Director of Engineering.
2. The existing utility poles along Naperville Road for electric, telephone and cable service shall be relocated underground.
3. The foregoing conditions and requirements shall be at the Developer's sole cost and expense.
4. The building materials to be used for the 5<sup>th</sup> Floor shall be the "Current Proposal – Brick to match existing mid-rise with painted Hardie siding" as depicted on the plans entitled "Courthouse Square – Residential Development - Lots 9 & 10 and Outlots F & G, 5<sup>th</sup> Floor – Material Sketches", prepared by Antunovich Associates, dated August 8, 2014.
5. Developer shall install, at its sole cost and expense, a Reber Street vehicular egress/ingress to lower level parking of the second apartment building so long as the City Engineer determines, based on Developer's approved design elevations, that such egress/ingress complies with applicable ordinances and stormwater regulations after proposed revisions to base stormwater levels are set by DuPage County.

**Section 5:** All Ordinances or parts of Ordinances in conflict with these provisions are repealed.

**Section 6:** This Ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

**Section 7: Authority to Terminate and Revoke:** The provisions of this Ordinance notwithstanding, in the event one or more lawsuit(s) are filed within the statutorily permitted time challenging this FIFTH AMENDMENT and/or the CHS RESIDENCES ORDINANCE (collectively the “**RESIDENCES LAWSUIT**”), DEVELOPER shall have the right and authority to terminate and revoke this FIFTH AMENDMENT (“**RIGHT OF REVOCATION**”) by giving the CITY written notice thereof (“**REVOCATION NOTICE**”) no later than thirty (30) days following the last to occur of: (i) the expiration of said statutorily permitted filing period, (ii) One Hundred Twenty (120 days) days following the filing of the MOTION TO DISMISS, as hereinafter defined, or (iii) the date of entry of a FINAL ORDER, as hereinafter defined, but in any event no later than January 16, 2015, unless Section “z” of the **CONSENT DECREE** is extended by order of Court in which instance the January 16, 2015 date shall be extended to the date in the Court Order (“**REVOCATION PERIOD**”). Prior to exercising the **RIGHT OF REVOCATION**, DEVELOPER shall file one or more dispositive motion(s) to dismiss with prejudice the RESIDENCES LAWSUIT utilizing legally reasonable strategies (collectively “**MOTION TO DISMISS**”). In the event a RESIDENCE LAWSUIT remains pending following the entry of a final order ruling on the MOTION TO DISMISS (“**FINAL ORDER**”), or in the event a FINAL ORDER is not entered by the court within One Hundred Twenty (120 ) days following the filing of the MOTION TO DISMISS or January 16, 2015, whichever shall first occur, DEVELOPER shall have the right to exercise the **RIGHT OF REVOCATION** prior to the expiration of the **REVOCATION PERIOD**. In the event DEVELOPER exercises the **RIGHT OF REVOCATION** and delivers a **REVOCATION NOTICE** to the CITY in a timely manner, the FIFTH AMENDMENT and CHS RESIDENCES ORDINANCE shall be void and of no force or effect ab initio. In that event, the **ORIGINAL AGREEMENT**, including the **THIRD AMENDMENT**, shall be reinstated nunc pro tunc and continue in force and effect. The **REVOCATION NOTICE** shall be recorded with the DuPage County Recorder’s Office against the CHS RESIDENCES PROPERTY at the DEVELOPER’S sole cost and expense. In the event a **REVOCATION NOTICE** is not duly given by DEVELOPER to the CITY prior to the expiration of the **REVOCATION PERIOD**, or in the event every RESIDENCES LAWSUIT has been dismissed with prejudice following the entry of the **FINAL ORDER**, the **RIGHT OF REVOCATION** shall expire and be of no further force or effect.

ATTEST:

  
Sean Bennett-Hagan  
City Clerk

  
Mohammad J. Gharaibeh  
Mayor

Roll Call Vote:

Ayes: Councilman Rutledge  
Councilman Saline  
Mayor Gresk  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo  
Councilman Suess

Nays: Councilman Prendiville  
Absent: None

Motion Carried

Passed: August 25, 2014  
Published: August 26, 2014

EXHIBIT A

LOTS 9 AND 10 AND OUTLOTS F AND G IN COURTHOUSE SQUARE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, PURSUANT TO THE PLAT THEREOF RECORDED SEPTEMBER 8, 2005, AS DOCUMENT NO. R2005-197255, IN DUPAGE COUNTY, ILLINOIS ("COURTHOUSE SQUARE SUBDIVISION");

EXCEPT THAT PART OF LOT 9 IN COURTHOUSE SQUARE SUBDIVISION LYING AT OR BELOW AN ELEVATION OF 739.50 AS REFERENCED TO THE DUPAGE COUNTY DATUM (NDGV29) AND SITUATED IN THE FOLLOWING DESCRIBED PARCEL: COMMENCING AT THE SOUTHEAST CORNER OF OUTLOT D IN SAID COURTHOUSE SQUARE; THENCE SOUTH 86 DEGREES 01 MINUTES 16 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID OUTLOT D, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 03 DEGREES 58 MINUTES 44 SECONDS EAST, RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 5.00 FEET; THENCE SOUTH 86 DEGREES 01 MINUTES 16 SECONDS WEST, RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 90.79 FEET; THENCE NORTH 03 DEGREES 58 MINUTES 44 SECONDS WEST, RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 5.00 FEET TO SAID SOUTHERLY LINE OF OUTLOT D; THENCE NORTH 86 DEGREES 01 MINUTES 16 SECONDS EAST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 90.79 FEET TO SAID POINT OF BEGINNING.

P.I.N.: 05-16-318-007; -014; -015; 017

The subject property is commonly known as 250 South Naperville Road and 245 East Willow Avenue, Wheaton, IL 60187.

EXHIBIT B



# COURTHOUSE SQUARE RESUBDIVISION PHASE 5

Existing Lot Configuration

Proposed Phase 5 Lots

WASHINGTON STREET

LOT 9

Utility Thru-

Stevewill Road

100' x 100'

PEPPER STREET



**COURTHOUSE SUBDIVISION PHASE 5**

LITERATURE SURVEY

1276/116 ROAD



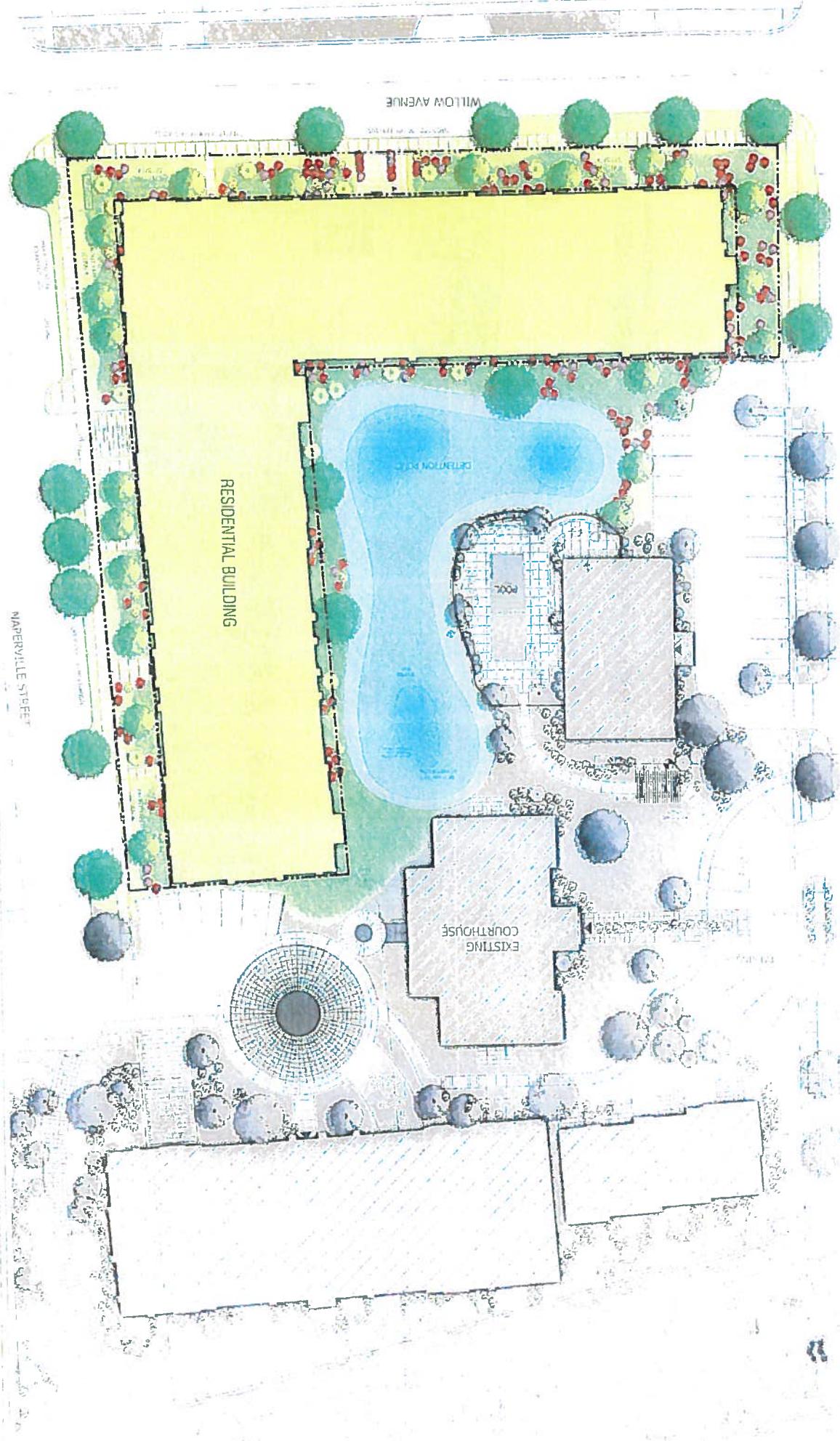
CONTRACTOR  
LAND SURVEYORS

# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development

Developer

Aminovitch Associates Architects & Planners



# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development

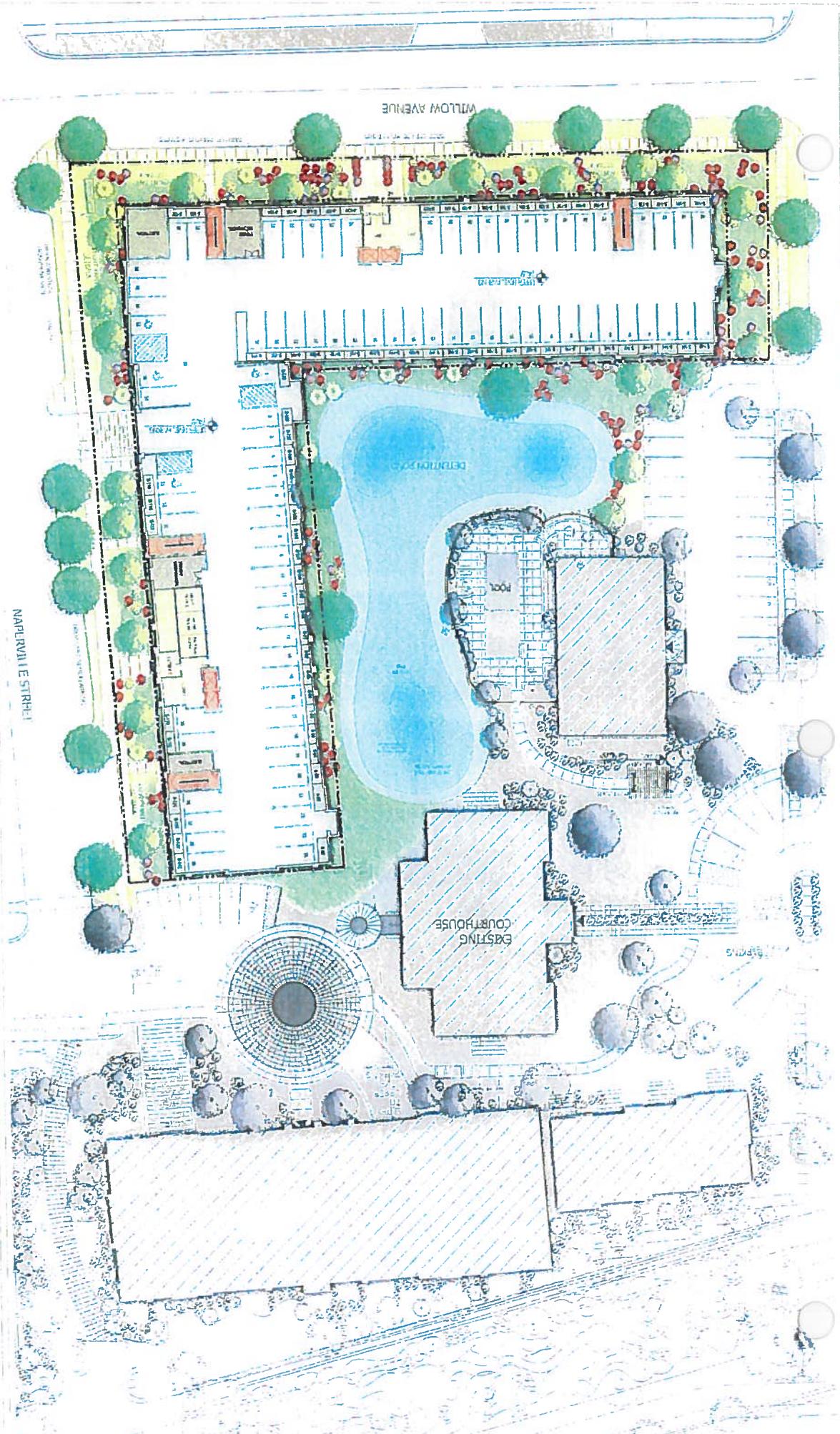
Developer

Antunovich Associates Architects & Planners

Ground Floor Plan

Wheaton, Illinois

June 5, 2011



# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

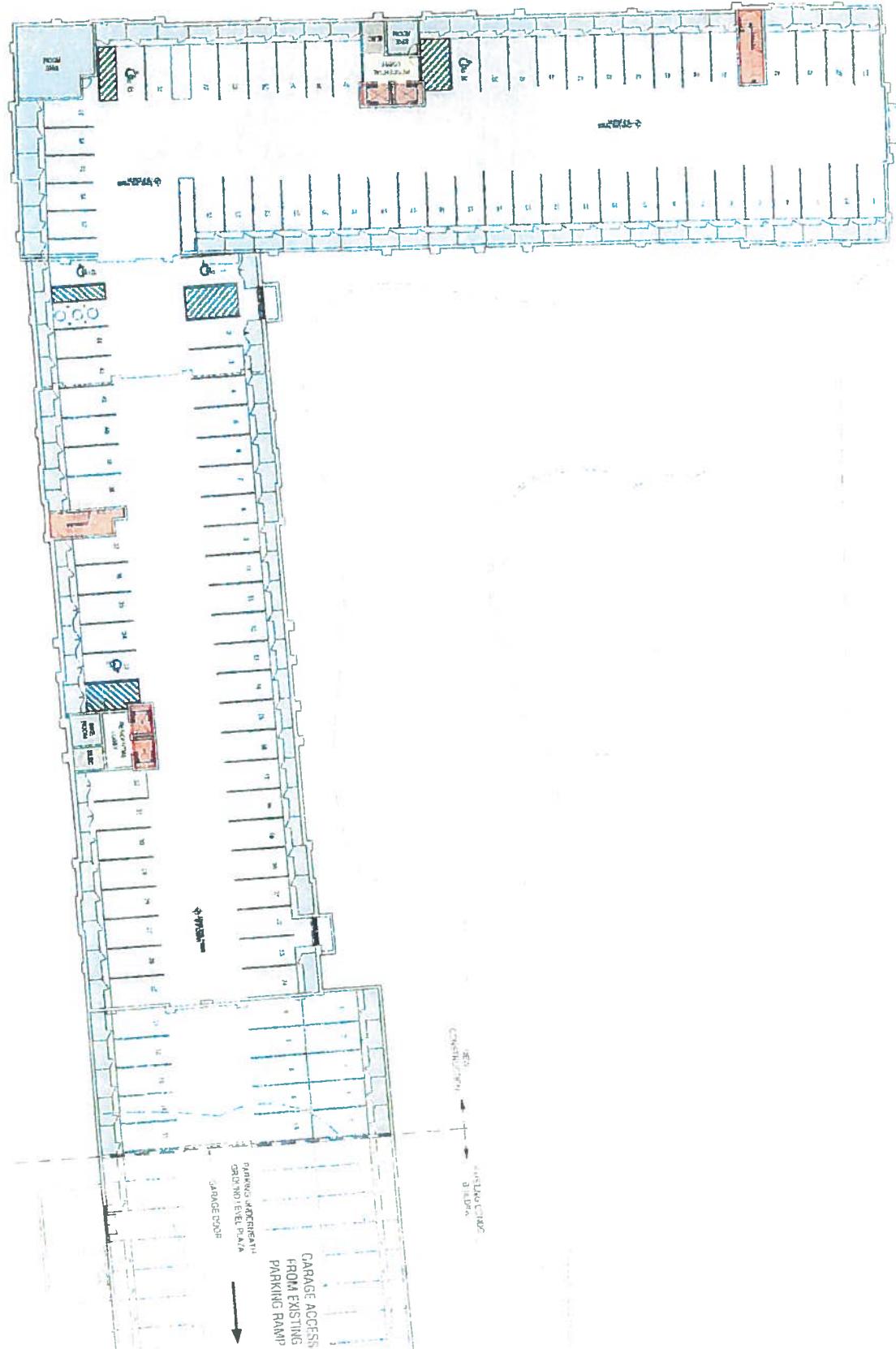
## Lower Level - Parking Plan

Meator Illinois

June 6, 2011

Focus Development Developer

Antunovich Associates Architects & Planners



# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development | Developer

Antunovich Associates | Architects & Planners

Unit layouts and demising walls for illustration purposes only



Second Floor Plan

Wheaton, Illinois | June 6, 2011

# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development

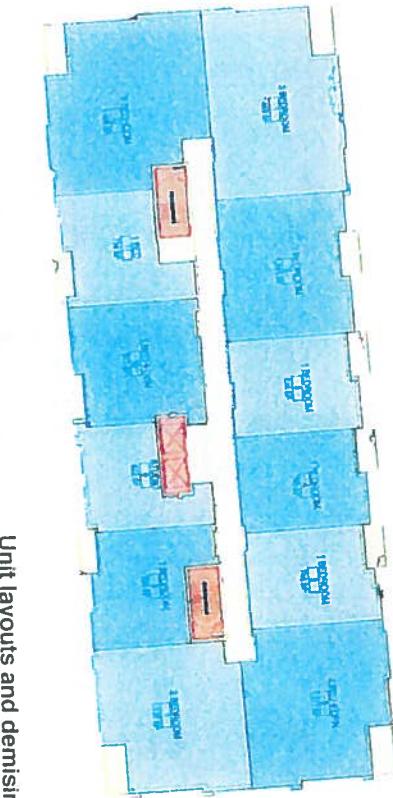
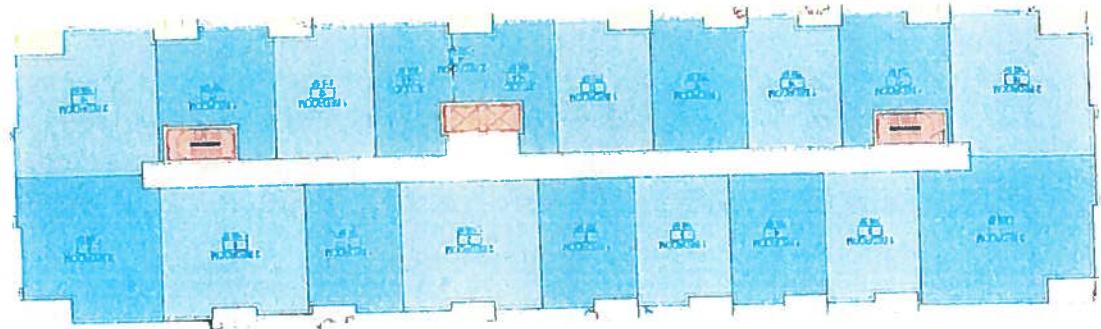
Developer

Antunovich Associates Architects & Planners

Typical Residential Floor Plan

Wheaton, Illinois

June 6, 2011



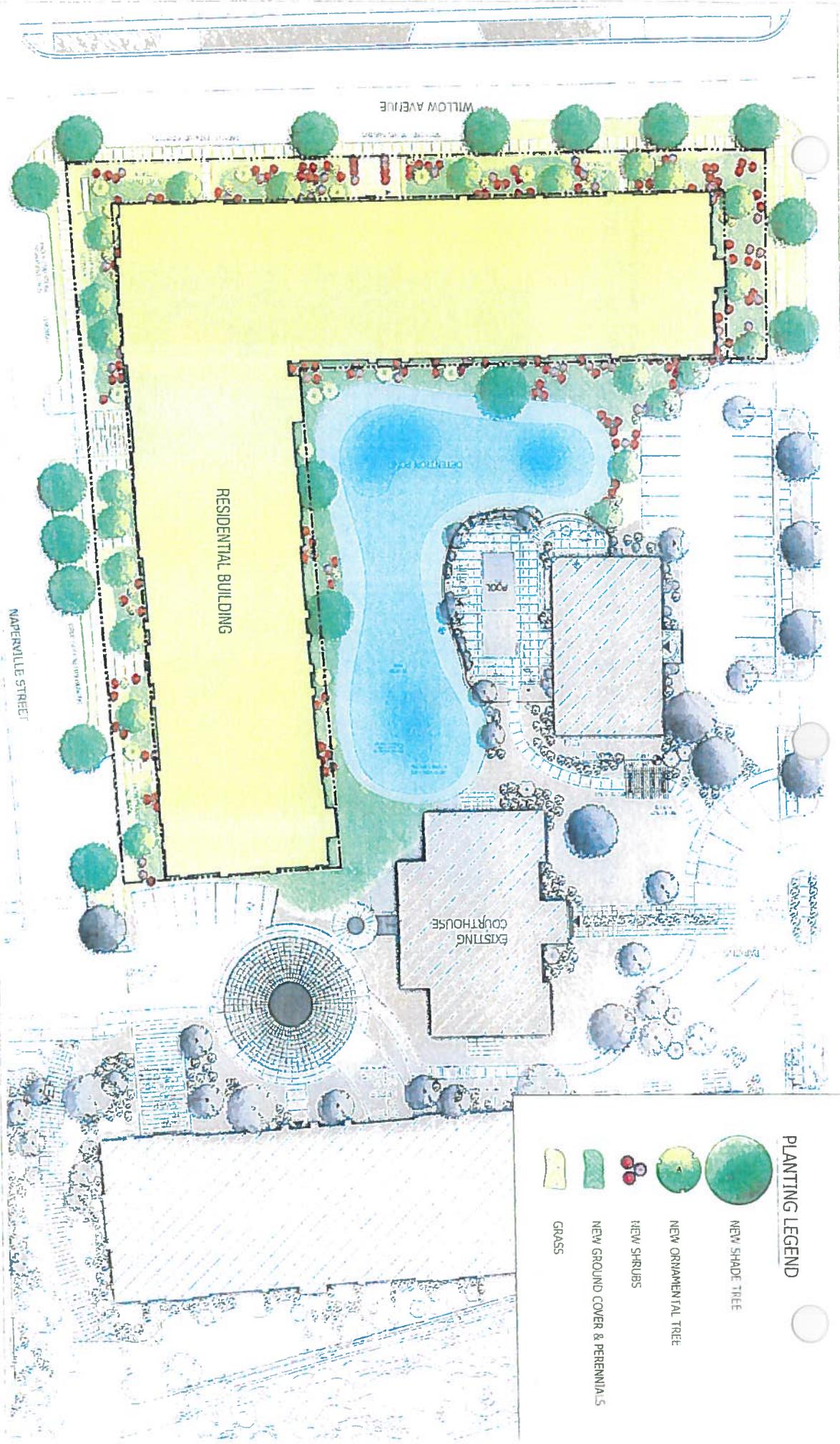
Unit layouts and demising walls for illustration purposes only

# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development Developer

Antunovich Associates Architects & Planners

Landscape Plan  
Wheaton, Illinois  
June 5, 2011

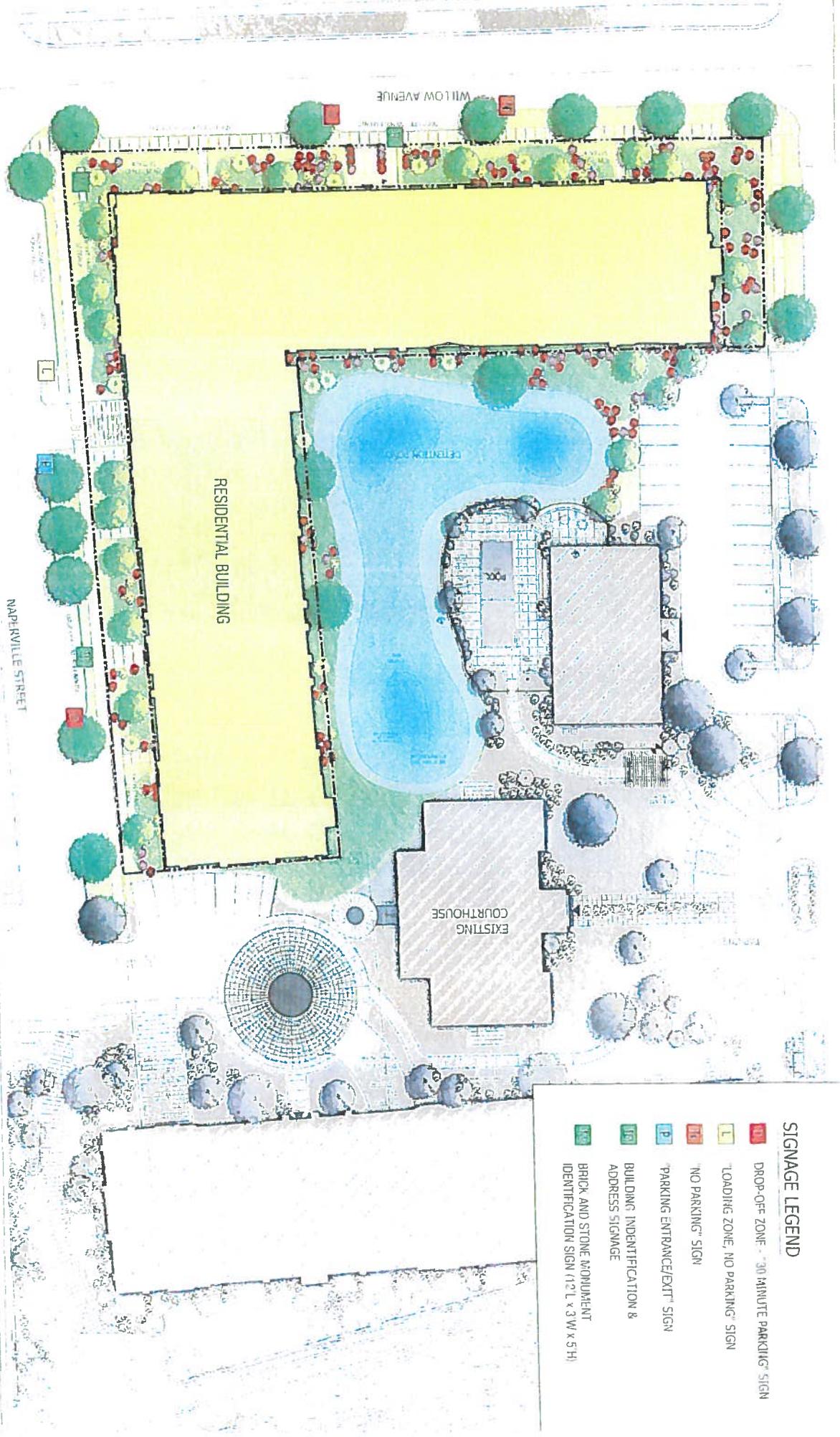


# Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development Developer

Antonovich Associates Architects & Planners

Signage Plan  
Wheaton, Illinois  
June 6, 2011





East Elevation - from Naperville Road



West Elevation - from Reber Street

## Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development Developer | Antunovich Associates Architects & Planners

Building Elevations

Wheaton, Illinois | July 30, 2014



South Elevation - from Willow Avenue



North Elevation

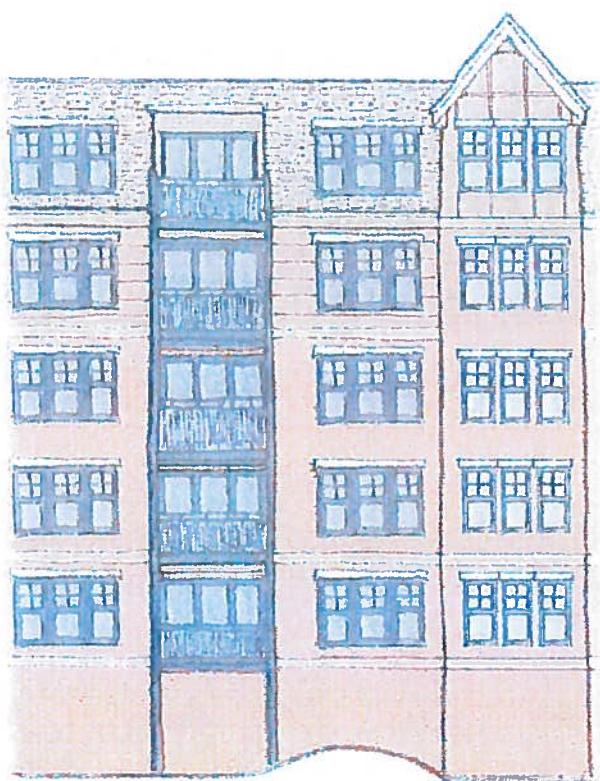
## Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development Developer | Antunovich Associates Architects & Planners

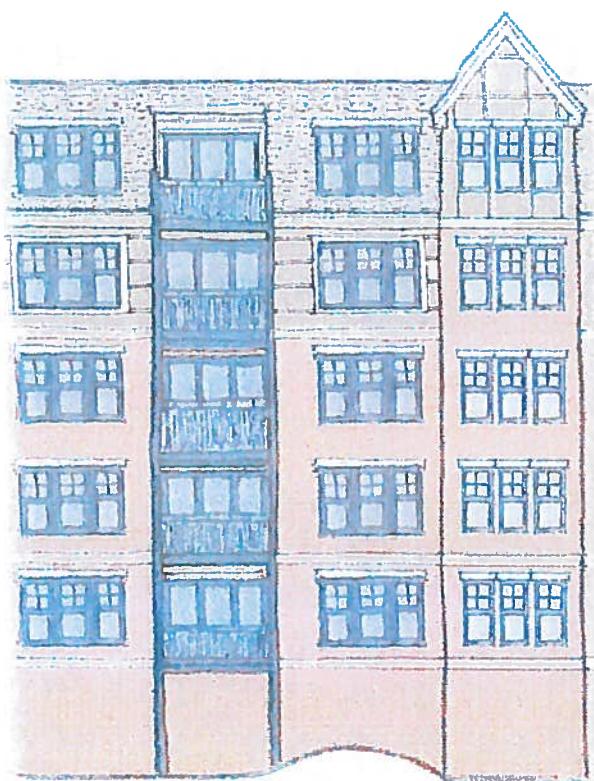
Building Elevations

Wheaton, Illinois

July 30, 2014



Current Proposal - Brick to match existing mid-rise  
with painted Hardie siding



Revised Proposal - Brick to match existing mid-rise  
with 'Sandstone Beige' Hardie Siding and 'Arctic White' trim

## Courthouse Square - Residential Development - Lots 9 & 10 and Outlots F & G

Focus Development Group

Antunovich Associates Architects

5th Floor - Material Sketches

Sheet 1 of 4

August 8, 2014