

**Ann Arbor City Council Session: October 19, 2009
 Email Redactions List Pursuant to Council Resolution R-09-386**

<u>Time</u>	<u>To</u>	<u>From</u>	<u>CC</u>	<u>Redactions</u>	<u>Reason for Redaction</u>
4:35 PM (received 10:23 PM by Rapundalo, Stephen)	Rapundalo, Stephen	MacDonald, Jim		Personal email address	Privacy
10:21 PM	Whitaker, Tom	Detter, Raymond	Higgins, Marcia; Briere, Sabra; Hieftje, John; Anglin, Mike; Hohnke, Carsten	Personal email addresses	Privacy
10:09 PM	Phillips, William	Rapundalo, Stephen		Personal email address	Privacy
10:08 PM	Phillips, William	Rapundalo, Stephen		Personal email address	Privacy
8:44 PM	Rapundalo, Stephen	Phillips, William		Personal email address	Privacy
8:43 PM	Trocchio, Ginny	Ezekiel, Dan	Hohnke, Carsten	Personal email addresses	Privacy
8:37 PM	City Council	Chesney, Elena		Personal email address; home address	Privacy
11:50 AM (received 8:10 PM by Hohnke, Carsten)	City Council	Brown, Stephen		Personal email address	Privacy
5:47 PM (received 8:01 PM by Hohnke, Carsten)	wbwc@googlegroups. com	wbwc@googlegroups. com	Hohnke, Carsten	Personal email address	Privacy
7:33 PM	Gunn, S City Council	City Council		Personal email address	Privacy
10:37 AM (received 7:23 PM by Anglin, Mike)	City Council	Clifford, John		Personal email address	Privacy

Higgins, Sara

From: JC Seminars [jtoliff@comcast.net]
Sent: Monday, October 19, 2009 10:37 AM
To: Hieftje, John; Smith, Sandi; Briere, Sabra; Rapundalo, Stephen; Derezinski, Tony; Taylor, Christopher (Council); Greden, Leigh; Higgins, Marcia; Teall, Margie; CHonke@a2gov.org; Anglin, Mike
Subject: Argo Dam

City Council,

I strongly urge you to please REMOVE ARGO DAM. The trend these days is for restoring rivers back to their original flows, where-ever possible.

Please don't take the retrograde step of repairing the dam. Bring white water back to Ann Arbor.

John Clifford

Higgins, Sara

From: Jim MacDonald ([REDACTED])
Sent: Monday, October 19, 2009 4:35 PM
To: Rapundalo, Stephen
Subject: Argo Dam

Members of Ann Arbor City Council,

Please do not allow a resolution concerning Argo dam to be placed before council without the proper hearings and input from all concerned sources. To do so would be an irresponsible action and very poor stewardship of our water resources. Please do not allow the fate of our wonderful Huron River fall victim to bully politics, That would be poor representation of the constituents to whom you were elected to represent.

Thanks,

Jim MacDonald

Higgins, Sara

From: Raymond Detter [REDACTED]
Sent: Monday, October 19, 2009 10:21 PM
To: Tom Whitaker
Cc: C. Robert Snyder; Ilene R. Tyler; Christina Crockett; Pollack, Peter (PMAC); Hugh Sonk; Higgins, Marcia; Nystuen, Gwen (PAC); Ann Shriber; Norm Tyler; Susan Wineberg; Alice Ralph; Ellen Ramsburgh; Sabra Briere; Vivienne Armentrout; DiLeo, Alexis; Smith, Sandi; Miller, Jayne; Peter Nagourney; Peter Nagourney; Rampson, Wendy; Hieftje, John; Eppie Potts; Christine Brummer; [REDACTED]; Jack Eaton; Betsy Price; Anthony Pinnell; Anglin, Mike; Hohnke, Carsten
Subject: Re: A2D2 Design Guidelines and Zoning

Tom,

The comment was meant in a humorous and private way. I am sorry it was sent out to everyone on the list because I mistakenly pressed the "reply all" button. Please accept my apology and pass this message on to whomever you wish.

You are certainly right--that we need to discuss all these issues. In answer to your major question of how this is all going to be pulled together--which follows a lot of other questions--I think it is all going to be pulled together one step at a time. That is the way I personally hope to look at it. I am sick of developers talking about the Central Area as though it were the downtown. I don't want us talking about the downtown as though it were the Central Area--although it is clear that Downtown Zoning will impact the Central Area. I hope that strong Design Guidelines will reduce the danger of any negative impact. Right now we are looking at the A2D2 Zoning Revisions and the Design Guidelines that will be passed in tandem. Yes, I believe that Zoning and those Guidelines will be a separate part of the city Master Plans along with an already adopted and amended Downtown Plan, and I have argued repeatedly that the Downtown Plan, Downtown Zoning, and Downtown Design Guidelines should all be carefully referenced to one another.

I have attended the first meeting of the R4C/R2A meetings. I intend to attend all of them. They are extremely important. Chris Crockett and I, as well as Eppie Potts, have read the Central area Land use portions of the combined City Master Plans. We don't like the way it is being done, but I believe it is now on line for all to see. I fully intend to fight any attempt at the R4C meetings to change any part of the Central Area Plan to permit out of scale, out of character, highly dense developments. I will also fight any attempt to change the Central Area Plan through any City Council action. You have done a great job providing leadership on Fifth Avenue and on Madison to accomplish that same thing. Let's keep at it.

A part of my point is that these things, as well as others, may be all related, but they can best be dealt with by concentrating our efforts very carefully and wisely with each of them--one at a time, or all separately at the same time. That is what I hope to do.

The meeting at the Tyler's next Monday will be devoted to the A2D2 Design Guidelines. We are asking that everyone who comes to that meeting read the Design Guidelines completely and have specific recommendations for changes. Of course, the zoning will come up, since the Design Guidelines and the Zoning are integral.

I hope we come out of that meeting with a coherent statement of what we want. I hope that we are able to communicate our position to the decision makers before November 16. I hope we all back up our statement by being present and speaking at the November 16 meeting.

10/21/2009

Ray

On Oct 19, 2009, at 1:42 AM, Tom Whitaker wrote:

That was an insulting and belittling remark, Ray. I hope you will retract that comment to all you cc'd. My message was thoughtfully and soberly composed over two hours. I'm sorry if you didn't like or didn't agree with my comments, but they were heartfelt, and I thought they were well-reasoned, too.

These are all bites of the same apple and there is nothing clear nor systematic about the way the City has gone about all these efforts. Yes, downtown zoning and the downtown plan, along with design guidelines are finally close to a conclusion--maybe--but they still rely on chapters of the zoning code that are flawed. That is, unless you're telling me that the new downtown zoning will be a stand-alone chapter in the code, that does not refer to any other chapters? That's not the way I understood it, but correct me if I'm wrong (politely, please). Same can be said for R4C/R2A. Some of the biggest problems are not in sections related specifically to those zoning districts, but rather in bad (or lacking, or inconsistent) definitions for things like "dwelling unit" or "irregular lot."

Meanwhile, I'm concerned that this consolidated master plan will get run through the approval process while we are all distracted with downtown or other matters, and we won't really know what's been done to our beloved CAP until it's too late. Have you taken a look at each of the old plans, along side the new one to see what's been done? I haven't. An edited version of each area plan would make it clear to all, but staff has refused to provide this.

With AHP, Downtown A2D2/Plan/design guidelines, a consultant looking at all the zoning, and the R4C/R2A study all going on at the same time, who is steering the boat? How do we know all of these individual efforts are contributing to one unified strategy for ending up with a comprehensive zoning code and master plan that is functional and legally strong? Is there a list somewhere of everything that needs to be done and in what order? Does the right hand know what the left is up to? For example, we now have high density planned for downtown, but the AHP revisions are also intended to add it along transportation corridors, and certain people want to add density to R4C/R2A as well. The Chamber wants to expand Downtown into the neighborhoods and it would seem they have willing partners on Council and CPC. It doesn't seem very well thought out to have density everywhere except the greenbelt and Ann Arbor Hills. How are AHP, R4C/R2A, and the zoning consultant's work going to be reconciled with each other and the new downtown zoning? Does anyone have any idea how all of this is going to be pulled together?

Ray, I can tell you, as one who has tried to keep a large group of residents interested in all this, people's eyes are glazing over. The last thing anyone wants is to throw up their hands and live with whatever Council decides, but people have lives to lead and cannot possibly keep this all straight without constant vigilance. There is just too much coming at them, and it is coming from all directions. In this neighborhood, on top of this bombardment of various planning efforts, we've been having to fight a ground war against bad developments where it seems city staff has taken on the role of design consultants for the developers. Planning commissioners seem all too willing to throw out any and all existing City plans and substitute them with their own.

I feel a responsibility to pass on these frustrations, felt by all my neighbors, whenever the opportunity arises. I'm sorry if I went off your design guideline topic in my previous message, but I really think the City is going in too many haphazard directions at the same time, with no one providing overall direction.

10/21/2009

Tom

On Mon, Oct 19, 2009 at 12:20 AM, Raymond Detter <[REDACTED]> wrote:

Have you been drinking? Let's get it all together in a clear and systematic way that works--sometimes one item at a time. We need a downtown zoning plan and design guidelines to control it. I am for taking all the time we need. Let's not mix up the Downtown and the Central areas in the same way that developers love to do.

Ray

On Oct 18, 2009, at 11:42 PM, Tom Whitaker wrote:

Regarding the, "let's try it for a year and see how it goes" idea, I wonder how many downtown projects will even be proposed in the coming year. One? None? If anything, perhaps one of the previously approved projects may finally break ground, but I suspect even that would be overly optimistic. Doesn't seem to me that we'll have much opportunity to exercise whatever process is imposed within the coming year, so I'm not really following along with the "see how it goes for a year" plan. I'd rather see us do our best to get it right the first time and adopt a strong design-review process that is mandatory, with compliance that is also mandatory. But will it stand up to a legal challenge?

Problem is, everything is still rooted in a zoning code that is full of flaws: conflicting or missing definitions, lack of full compliance with State law, and constant "flip-backs" between chapters among other problems. I can't believe that we're going to let this unique opportunity (economic depression and financial freeze) go by without doing the real hard work that needs to be done. I hear the R4C/R2A committee finally met for the first time, over 6 months after the resolution to study R4C/R2A was passed by Council! At this rate, we'll never be ready when/if the Michigan and national economies ever pick up to a point where developers begin to plan new projects--that is, ones that aren't subsidized by government. But here we sit with a zoning code that is broken, misinterpreted, arbitrarily enforced, and as a result, easy pickings for attorneys on all sides to challenge. And now we stand ready to add a layer of design guidelines to this house of cards.

I'm also very concerned that we're being force-fed a new "consolidated master plan" without any idea of what's been done to the previous area plans. Why can't we see a marked-up version of each area plan so we know what has been cut and what has been added? (We're told nothing has been added, but that's not true. The introductory statement is new, for one thing.) Why can't this consolidation take place as part of the master plan updating process, with the normal and substantial public input that entails? Seems like a colossal waste of staff time (in a department that is already short on revenue) that could have been spent working on corrections to the zoning code.

sr

I know we've just hired yet another consultant to do the work of City staff on the zoning, but how many carts are in front of how many horses right now? How will all of these various initiatives ever be reconciled with each other? How many times will they all have to ping pong around between Council, CPC, staff and consultants before we have master plans, zoning, and design guidelines that WORK, both individually and harmoniously?

We could really use some strong leadership to bring all this together into one cohesive strategy. I think the people of this city are confused and frustrated. Where are we headed?

Tom Whitaker

On Sun, Oct 18, 2009 at 4:26 PM, Raymond Detter <[REDACTED]> wrote:
You may be right, which is why I will support mandatory compliance when we can all agree on the standards applied in the mandatory process. That won't happen soon and we weaken the power of our board if we try to do that on the first round.

Ray

On Oct 18, 2009, at 10:14 AM, C. Robert Snyder wrote:

Ray--

I remain unconvinced that simply having a mandatory Design Standards Review Board educating, suggesting, even cajoling and scolding, yea even offering "rewards" in the form of "premiums" (yet to be spelled out!) will induce voluntary compliance, at least not in 100% of the new development projects. Having even "only" one or two "clunkers" out of ten still means Ann Arbor has yet again added 10% to 20% to its existing inventory of butt-ugly architecture! So what if we risk getting two more Buffalo Chicken Wings buildings so long as we get hopefully at least eight new shining jewels in our downtown crown! Perhaps the beauties will sufficiently outshine the uglies!

I do have at least one concern even with mandatory Design Standards Review Boards coupled with mandatory Design Standards Compliance. That concern centers around both the composition of the Review Board itself, and the uncertainty of unequivocal clarity and rightness of the Design Guidelines themselves. Adding to that uncertainty, we then add another layer--the developer's/architect's own interpretation of beauty and functionality! Three opportunities to get it wrong, not just two!

It would be an interesting exercise to take a formal written poll of

City Council members, Planning Commission members, City planning staff, DDA members, Chamber of Commerce members, and "involved" public citizens, asking but a few simple questions, such as:

1.a. in your opinion, what is the worst (ugliest, most misplaced, most dysfunctional, etc.) piece of architecture/building development in Ann Arbor, past/present/proposed? Why do you think that?

1.b.,c., d. What are the next three that you would add to the list, and why?

2.a. in your opinion, what is the best (elegant, most attractive, most functional, etc.) piece of architecture/building development in Ann Arbor, past/present/proposed? Why do you think that?

2.b.,c., d. What are the next three that you would add to the list, and why?

Note: Your examples cited in 1. and 2. above may be from the Private Sector (office buildings, residential, commercial/retail), and Public Sector (City/County/State government, the University, the Medical Center, etc.). Don't over-think it or worry that they might be in the "wrong order"! Don't worry if you can only come up with one or two examples rather than three or four! Your first immediate candidates are probably the best!

My fear, and prediction, is that, beyond a reasonable majority agreement (perhaps) on first place best and worst, the remaining nominees would be all over the place, as would the reasons given for their selection!

But I digress! Alas, even mandatory compliance doesn't guarantee a winner each and every time! But leaving the "when the rubber meets the road" final design decision to the developer, however noble their commercial interests, leaves that set of decisions in control of the wrong narrow special interests. I am open to any convincing arguments to the contrary!

Somebody, somewhere in history, someone must have said: ***"Good taste is too fragile to be left to the tasters!"***

In hopes of "better design",
Bob Snyder

On Oct 18, 2009, at 1:18 AM, Raymond Detter wrote:

Bob,

I think we all, ideally, would like design guidelines to be mandatory. At this stage, however, I feel, as do many others, that mandatory compliance might actually weaken the willingness of the Design Guidelines Board and process to press for strong standards. I know, for a fact, that the strong standards would be opposed in this political climate if compliance was mandatory. Therefore, I will oppose mandatory compliance.

Your support for mandatory compliance will be politically useful in getting stronger standards without mandatory compliance. Let's all support design guidelines that will work. In a year, we can look at it again if voluntary compliance does not work. We will all learn a lot in the process.

Ray

On Oct 17, 2009, at 6:37 PM, C. Robert Snyder wrote:

Ray,

I have to head to DTW Tuesday morning at 7:15 to catch a plane.

I expect to be lightly packed Monday afternoon so should be good for a 7 to 9 meeting!

My biggest disagreement is making Compliance to the Design Guidelines only voluntary (as my recent email outburst show)!

I believe Peter Nagourney is also strong on this, as are a number of others.

Should be a good wrestling match!

Bob

Higgins, Sara

From: Rapundalo, Stephen
Sent: Monday, October 19, 2009 10:09 PM
To: 'William Phillips'
Subject: RE: Hi Steve How did my name end up in your email to Edsall

or did you mean why I mentioned your interest in the dam discussions along with Tom? mostly because you and Tom talked to me about it back earlier in the spring/summer during the HRIMP process.

Sincerely,

Stephen

Stephen Rapundalo
Councilmember - Ward 2
City of Ann Arbor
Mobile: (734) 476-0648
[srapundalo@a2gov.org](mailto:rapundalo@a2gov.org)

From: William Phillips [mailto:████████████████████] [mailto:████████████████████]
Sent: Monday, October 19, 2009 8:44 PM
To: Rapundalo, Stephen
Subject: Hi Steve How did my name end up in your email to Edsall

Hi Steve. Looks like The issue is heating up about dam. How did my name end up with Edsall's in your email? Don't remember emailing you about it. Good luck with the politics.

Your friend Bill Phillips

Higgins, Sara

From: Rapundalo, Stephen
Sent: Monday, October 19, 2009 10:08 PM
To: 'William Phillips'
Subject: RE: Hi Steve How did my name end up in your email to Edsall

I simply replied to all - you were listed on Tom's original email.

Sincerely,

Stephen

Stephen Rapundalo
Councilmember - Ward 2
City of Ann Arbor
Mobile: (734) 476-0648
srapundalo@a2gov.org

From: William Phillips [mailto:████████████████████]
Sent: Monday, October 19, 2009 8:44 PM
To: Rapundalo, Stephen
Subject: Hi Steve How did my name end up in your email to Edsall

Hi Steve. Looks like The issue is heating up about dam. How did my name end up with Edsall's in your email? Don't remember emailing you about it. Good luck with the politics.
Your friend Bill Phillips

Higgins, Sara

From: William Phillips [REDACTED]
Sent: Monday, October 19, 2009 8:44 PM
To: Rapundalo, Stephen
Subject: Hi Steve How did my name end up in your email to Edsall

Hi Steve. Looks like The issue is heating up about dam. How did my name end up with Edsall's in your email?
Don't remember emailing you about it. Good luck with the politics.
Your friend Bill Phillips

10/21/2009

Higgins, Sara

From: Dan Ezekiel [REDACTED]
Sent: Monday, October 19, 2009 8:43 PM
To: Trocchio, Ginny
Cc: Denise Taylor-Moon; [REDACTED]; Hohnke, Carsten; Jennifer Santi Hall; [REDACTED]; [REDACTED]; Tom Bloomer; Kohring, Peg; Bowden (King), Anissa
Subject: Re: Reminder -- Wed. Oct. 21st Greenbelt meeting in Council Chambers

I will be there.

DE

On Oct 19, 2009, at 3:10 PM, Trocchio, Ginny wrote:

Commissioners,

As a reminder, we will have a Greenbelt Commission meeting this Wednesday, Oct. 21st at 4:30 PM. Also, as a reminder, we will have this meeting will be held in Council Chambers -- 2nd floor of City Hall. If you are not able to make the meeting, please let me know.

Thank you,
Ginny

**Please note the new phone number below!*

Ginny Trocchio
The Conservation Fund
Ann Arbor Greenbelt Project
100 N. Fifth Ave.
Ann Arbor, MI 48104
New! tel: 734-794-6210 X 42798
Cell: 734-646-3336
fax: 734-994-8312

*The Conservation Fund -
Rated A+ The Nation's Top Environmental Nonprofit -
by The American Institute of Philanthropy*

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Dan Ezekiel
[REDACTED]

10/21/2009

Higgins, Sara

From: Elena Chesney [REDACTED]
Sent: Monday, October 19, 2009 8:37 PM
To: Hieftje, John; Smith, Sandi; Briere, Sabra; Rapundalo, Stephen; Derezinski, Tony; Taylor, Christopher (Council); Greden, Leigh; Higgins, Marcia; Teall, Margie; Hohnke, Carsten; Anglin, Mike
Subject: Huron River Resident for Dam Removal

Dear Ann Arbor City Council:

As a home owner on Barton Drive (on the Huron River) I highly value the environmental impact on any future decisions regarding Argo Dam.

The majority of citizens in Ann Arbor seem to be unaware or misinformed about this issue and we should not be hasty in trying to maintain the 'status quo' at the expense of the river's long term sustainable health.

The budgetary and environmental issues must be fully represented on both sides of the Argo Dam issue-**The council needs to conduct a serious, legitimate process to gather public and staff input and answer critical, still-unaddressed questions about Argo's future before forcing premature votes.**

Sincerely,
Elena Chesney

[REDACTED]
[REDACTED]
[REDACTED]

10/21/2009

Higgins, Sara

From: Stephen C. Brown [REDACTED]
Sent: Monday, October 19, 2009 11:50 AM
To: Hieftje, John; Smith, Sandi; Briere, Sabra; Rapundalo, Stephen; Derezinski, Tony; Taylor, Christopher (Council); Greden, Leigh; Higgins, Marcia; Teall, Margie; Hohnke, Carsten; Anglin, Mike
Subject: City Council resolution DC-4: Argo Dam Removal

Dear Ann Arbor City Council,

Shame on you! How about continuing with the process to gather public and staff input and answer critical, still-unaddressed questions about Argo's future before forcing premature votes. Please Table this resolution during the City Council vote tonight. A vote today is premature and designed to pre-empt this process.

Best Regards,

Steve Brown (Ward 3)
[REDACTED]

"Dans les champs de l'observation, le hasard ne favorise que les esprits bien prepares" *L. Pasteur*

10/21/2009

Higgins, Sara

From: wbwc@googlegroups.com on behalf of Paul Alman <[REDACTED]>
Sent: Monday, October 19, 2009 5:47 PM
To: wbwc@googlegroups.com
Subject: [WBWC] Re: Still a lot to do...

Interesting comments John.

Many, many years ago, the AA Public Schools actually had bike safety classes that were presented to the grammar school aged kids. It was an "in school" activity and a few of us helped put on classes for a couple of years. Also, the Ann Arbor Velo Club has had in the past, special drills for their junior (and others) riders, which were excellent for teaching kids how to ride in traffic, how to ride close to one another without panic, how to ride a straight line etc. We actually invited the AABTS to participate, and while we did get a number of people to participate (and all found it extremely helpful) not nearly enough took part (IMHO). Also the AABTS has put on a number of Road One classes (I think 4 over the past few years) which are truly excellent for helping people understand the dynamics of riding in traffic. We tried to make it easy for ride captains to participate, some did, most didn't "i know how to ride my bike!" and I think you can tell the difference between those who did and those who didn't.

Making cyclists have licenses, well, I am not sure if that would improve things or not, but definitely reintroducing cycling safety and safe riding into the schools, and beefing up the cycling part of driver's education, certainly would be beneficial to all.

Paul

On Oct 19, 2009, at 5:10 PM, John Hritz wrote:

I had the same thoughts going through my head when I watched a father biking in the street with his daughter who looked to be grade school age. He was pointing out the traffic signal and showing her to put her pedal at just beyond top-dead-center to prepare to enter the intersection all the while trying to rein her in. I suddenly had the thought that to ride a bike in the street you might have to have a driver's license (or comparable training). I know that's heresy, but it was clear the workload for watching traffic, lights, signs, etc. was pretty high for her (and for him).

This also reminded me that there's a lot of folks in cars that haven't a clue how to pass slow moving vehicles. I was heading down Packard toward the stone school split and someone wanted to turn right onto Shady Lane. They were clearly struggling with whether to accelerate and cut-in or hang back, all the while following very closely. We teach people to parallel park, but we don't educate them on what a reasonable clear distance between you and a rider/pedestrian/motorcycle feels and looks like. I get the distinct feeling that drivers think that crossing the lane markers to overtake is illegal even though you would reasonably do that if a vehicle were disabled/parked or for any other obstruction. That said, I'm also not sure any of us would like to be the guinea pigs in a class aimed at teaching drivers how to overtake safely, i.e some sort of slow speed drill in a parking lot.

On Mon, Oct 19, 2009 at 4:37 PM, Paul Alman <[REDACTED]> wrote:

This afternoon, just after 4 PM, I was leaving downtown in my car after doing a volunteer stint at the WEMU Fall Fundraiser, I turned

off Ashley onto Liberty. Between Ashley and Main I encountered:

1. First a cyclist riding on the wrong side of the street (at least he was in the street),
2. A women, with two young girls in tow, obviously coming from dance lessons, stepped in front of me in the middle of the block trying to cross the street,
3. A woman crossed against the light on Main Street, right in front of me.

If that wasn't enough, three blocks later, turning onto Division, 4 people decided that even though they had the "Don't Walk" light, to cross Liberty in front of me.

And we wonder why drivers sometimes think we - peds and riders - are the problem...

Paul

Paul Alman

[REDACTED]

--
John I Hritz, Jr. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Beware of any action immediately preceded by the words "Watch this!"

Paul Alman
[REDACTED]

You received this message because you are subscribed to the Google Groups "Washtenaw Bicycling and Walking Coalition" group.
To post to this group, send email to wbwc@googlegroups.com
To unsubscribe from this group, send email to wbwc+unsubscribe@googlegroups.com
For more options, visit this group at <http://groups.google.com/group/wbwc?hl=en>

Higgins, Sara

From: Beaudry, Jacqueline
Sent: Monday, October 19, 2009 7:56 PM
To: *City Council Members (All)
Cc: Postema, Stephen; Fales, Mary Joan; Bowden (King), Anissa
Subject: FW: Correct Argo Resolution Revision
Importance: High
Attachments: Argo Res 101909 Final Revision.doc

Hi Stephen:

The link was updated with the revised version shortly after Mary sent it to me tonight at 5:30. I just checked and the Council packet link is up-to-date. Please note that both the revised version marked REVISIED and the original version are in the packet. The revised version is on Page 152-153 and the original version follows. Hope this helps.

Thanks.

 Jacqueline Beaudry
 City Clerk
 City of Ann Arbor
 Please note new phone number:
 734-794-6140 (p)
 734-994-8296 (f)

From: Agenda, Clerk
Sent: Monday, October 19, 2009 7:45 PM
To: Beaudry, Jacqueline
Subject: FW: Correct Argo Resolution Revision
Importance: High

Anissa

Thankfulness finds something good in every circumstance.

 cid:image002.gif

From: Rapundalo, Stephen
Sent: Monday, October 19, 2009 7:20 PM
To: *City Council Members (All)
Cc: Agenda, Administrator; Agenda, Attorney; Agenda, Clerk
Subject: Correct Argo Resolution Revision

All,

Upon closer examination the Argo Dam resolution in your packet is not the latest revision - I was told that it had been added to the packet earlier this evening. Please find attached the correct version to review. Thanks.

10/21/2009

Sincerely,

Stephen

Stephen Rapundalo
Councilmember - Ward 2
City of Ann Arbor
Mobile: (734) 476-0648
srapundalo@a2gov.org

WHEREAS, the City of Ann Arbor has for years owned and maintained several dams along the Huron River, and

WHEREAS, studies of the Huron River have raised the question of the need to manage the river and each of the impoundments created by these dams, and

WHEREAS, the Argo Dam and Argo Pond have recently become the focal point for considerable discussion about the "pros and cons" of keeping the Argo Dam in place, and

WHEREAS, the Ann Arbor community enjoys many recreational opportunities and environmental attributes created by the existence of Argo Pond within the Huron River system, and

Whereas, the best interests of the Ann Arbor community will be served by preserving the Argo Dam at this time given its sound structural integrity, and

WHEREAS, the Argo Dam includes several associated structural features, including the "headrace embankment", which has drawn the concern of the Michigan Department of Environmental Quality (MDEQ) for safety reasons related to the adequacy of toe-drains which are designed to drain seepage from the headrace, and

WHEREAS, repairs to the headrace embankment could be completed for a small fraction of the cost of removing the entire dam, and therefore be it

RESOLVED, the Ann Arbor City Council declares its intent to maintain the Argo Dam and Argo Pond for the time being and allow staff to develop and implement specific strategies to mitigate any infrastructure deficiencies with the headrace embankment and thereby satisfy the MDEQ's requirements, and

RESOLVED, the Ann Arbor City Council directs the City Administrator to take actions in support of this declared intent, including identifying a timetable and necessary funding sources to support the infrastructure improvements.

Higgins, Sara

From: [REDACTED]
Sent: Monday, October 19, 2009 7:33 PM
To: Hieftje, John; Smith, Sandi; Briere, Sabra; Rapundalo, Stephen; Derezinski, Tony; Taylor, Christopher (Council); Greden, Leigh; Higgins, Marcia; Teall, Margie; Hohnke, Carsten; Anglin, Mike
Subject: Argo Dam

1. The city should remove Argo Dam. To help make your case, see what Argo pond and the river will look like once the dam is removed, please :
click on this link
2. The council needs to conduct a serious, legitimate process to gather public and staff input and answer critical, still-unaddressed questions about Argo's future before forcing premature votes.

Higgins, Sara

From: JC Seminars [REDACTED]
Sent: Monday, October 19, 2009 10:37 AM
To: Hieftje, John; Smith, Sandi; Briere, Sabra; Rapundalo, Stephen; Derezinski, Tony; Taylor, Christopher (Council); Greden, Leigh; Higgins, Marcia; Teall, Margie; CHonke@a2gov.org; Anglin, Mike
Subject: Argo Dam

City Council,
I strongly urge you to please REMOVE ARGO DAM. The trend these days is for restoring rivers back to their original flows, where-ever possible.
Please don't take the retrograde step of repairing the dam. Bring white water back to Ann Arbor.
John Clifford

Higgins, Sara

From: Rapundalo, Stephen
Sent: Monday, October 19, 2009 7:20 PM
To: *City Council Members (All)
Cc: Agenda, Administrator; Agenda, Attorney; Agenda, Clerk
Subject: Correct Argo Resolution Revision
Attachments: Argo Res 101909 Final Revision.doc

All,

Upon closer examination the Argo Dam resolution in your packet is not the latest revision - I was told that it had been added to the packet earlier this evening. Please find attached the correct version to review. Thanks.

Sincerely,

Stephen

Stephen Rapundalo
Councilmember - Ward 2
City of Ann Arbor
Mobile: (734) 476-0648
srapundalo@a2gov.org

10/21/2009

C

Court of Appeals of Michigan, Division No. 1.
Willa June MILEFF, Plaintiff-Appellant,

v.

WINKELMAN BROS. APPAREL, INC., a
Michigan Corporation, Defendant-Third Party

Plaintiff-Appellee,

and

Seymour I. Caplan, Defendant-Appellee.

Docket No. 13733.

Dec. 5, 1974.

Released for Publication Feb. 20, 1975.

Action was brought to recover damages for abuse of process arising out of wrongful issuance of garnishments. The Circuit Court, Wayne County, Edward F. Bell, J., entered a judgment in favor of the plaintiff who appealed from the denial of a new trial. The Court of Appeals, Peterson, J., held that plaintiff could not complain of admission of records containing alleged hearsay where they were admitted with the stipulation of counsel and that trial court's opinion was sufficient to show basis of award of damages.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ↪882(8)

30 Appeal and Error

30XVI Review

30XVI(C) Parties Entitled to Allege Error

30k881 Estoppel to Allege Error

30k882 Error Committed or Invited by
Party Complaining

30k882(8) k. Admission of Evidence in General. Most Cited Cases

Where records in trial before court were received by stipulation of appellant's counsel with invitation to witness to read therefrom what witness wanted to the judge, appellant could not complain on appeal

of alleged error in admitting records containing hearsay. GCR 1963, 517.1.

[2] Trial 388 ↪395(1)

388 Trial

388X Trial by Court

388X(B) Findings of Fact and Conclusions of
Law

388k395 Sufficiency in General

388k395(1) k. In General. Most Cited

Cases

Trial court's opinion, after trial to court on both the liability and damage aspect of abuse of process case, was adequate to support its award of damages, contrary to appealing plaintiff's claim that the opinion did not specifically find what damages plaintiff did incur or relate the money award to specific injurious consequences of improper garnishment, since Court of Appeals was left with no doubt that trial judge's opinion accurately identified issues, disclosed the choices made between competing factual premises and assigned adequate reasons for that choice.

[3] Evidence 157 ↪570

157 Evidence

157XII Opinion Evidence

157XII(F) Effect of Opinion Evidence

157k569 Testimony of Experts

157k570 k. In General. Most Cited

Cases

Trial court is not obliged to accept opinions of psychiatrist, who testified on plaintiff's behalf in her suit for damages for abuse of due process, particularly where the opinions were based on self-serving history from the plaintiff patient whose credibility was suspect and whose recital of past events omitted facts significant to diagnosis.

****700 *101** Sol E. Goldberg, Southfield, for plaintiff-appellant.

Donald B. Miller, Detroit, for Winkelman's.

Richard A. Kitch, Detroit, for Caplan.

Before J. H. GILLIS, P.J., and ALLEN and PETERSON,^{FN*} JJ.

FN* WILLIAM R. PETERSON, Circuit Judge for the 28th Judicial Circuit, sitting on the Court of Appeals by assignment pursuant to Const.1963, art. 6, s 23 as amended in 1968.

PETERSON, Judge.

Plaintiff sued for abuse of process, and appeals an award of damages claimed to be inadequate.

Defendant Caplan, an attorney, brought an action against plaintiff and her then husband on an account owed to defendant Winkelman. Judgment was taken against the husband only, but on October 25, 1960, Caplan caused a writ of garnishment to be **701 issued against plaintiff's employer founded on an affidavit that judgment had been obtained against her. The process was repeated on February 14, 1961.

Plaintiff claimed that as a result of the first garnishment, she was suspended from her job and compelled to make a payment to Caplan in order to release the garnishment and return to her job; that as a result of the second garnishment, she was discharged from her employment; and that while she had previously enjoyed good health, she began to suffer various physical complaints, which *102 were manifestations of mental illness requiring hospitalization and continuing care. In support of her claims as to damages, plaintiff offered the testimony of a number of psychiatrists who have treated or examined her subsequent to the last garnishment and who related her mental illness to having been 'fired' from her job.

The trial court, sitting without jury, found the issuance of the writs of garnishment to be wrongful and malicious, fixed plaintiff's damages at \$700.00, and

trebled the award because of the finding of malice. From the trial court's denial of a new trial, plaintiff appeals, asserting:

- (1) That there was a prejudgment and prejudice on the part of the trial judge depriving plaintiff of a fair trial;
- (2) That the damage award was so inadequate as to indicate the influence of prejudice or passion;
- (3) That the damage award was so inadequate as to be shocking to the conscience;
- (4) That the court's verdict as to damages was against the great weight of the evidence;
- (5) That the trial court failed to make adequate findings of fact under 1963 GCR 517.1; and
- (6) That the trial court erred in admitting records containing hearsay.

[1] The record discloses no merit to the first claim and that, as to the last, the records complained of were received by stipulation with counsel's invitation to the witness to 'Read what you want from them to the judge'. See *People v. Faison*, 14 Mich.App. 226, 165 N.W.2d 495 (1968).

GCR 1963, 517.1 provides:

'In all actions tried upon the facts without a jury . . ., the court shall find the facts specially and state separately its conclusions of law thereon and direct the *103 entry of the appropriate judgment. It will be sufficient if the court makes brief, definite, and pertinent findings and conclusions upon the contested matters without over elaboration of detail or particularization of facts. * * * Findings of fact shall not be set aside unless clearly erroneous. In the application of this principle regard shall be given to the special opportunity of the trial court to judge the credibility of those witnesses who appeared before it.'

The trial judge heard the liability and damage as-

pects of the trial separately, rendering separate opinions as to each. Plaintiff's complaint is that the opinion on damages did not specifically find what damages plaintiff did incur, nor relate the money award to specific injurious consequences of the garnishment. Plaintiff points particularly to the statement in the opinion that 'the trier of fact is not satisfied that the plaintiff has related all of her complaints since October of 1960 and February of 1961 to the garnishments', as indicative of some unstated finding by the court that Some of plaintiff's complaints were caused by the garnishments. Moreover, plaintiff claims, the evidence clearly establishes that her mental illness was causally related to the wrongful garnishments so that the nominal damages awarded were grossly inadequate.

[2] A reading of the opinion as a whole indicates satisfactorily the conclusions of **702 the trial judge and his reasons therefor. The opinion, after reviewing the liability finding of the prior opinion, turned to the crucial issue of the case, plaintiff's claims of causally-connected mental illness and the physical complaints alleged to have been manifestations thereof. It was only after a long review of those claims, noting inconsistencies and weaknesses in the proofs as well as reservations about plaintiff's credibility, that the court observed that it was *104 'not satisfied that the plaintiff has related all of her complaints' to the garnishments. The opinion then found that she had suffered humiliation and embarrassment as a result of the garnishments and made the damage award.

In *Johnson v. Wynn*, 38 Mich.App. 302, 305, 196 N.W.2d 313, 315 (1972), the Court quoted with approval the author's comment on GCR 1963, 517.1, from 2 Honigman and Hawkins, Michigan Court Rules Annotated, (2d ed.), p. 594:

'The findings of fact must include as much of the subsidiary facts as is necessary to disclose the steps by which the trial court reached its ultimate conclusion on each factual issue. The findings should be made at a level of specificity Which will disclose to the reviewing court the choices made as between

competing factual premises at the critical point that controls the ultimate conclusion of fact. That is, at the point where a given choice as to the concrete facts leads inevitably to the ultimate conclusion, the findings should disclose the choice which was made, so that the appellate court may test the validity of its evidentiary support.' (Emphasis added.)

The trial court's opinion leaves us with no doubt that the trial judge accurately identified the issue and his finding not only discloses the choice made between the competing factual premises, but assigns adequate reasons for that choice. The findings comply with Rule 517.1, and do so in terms making it clear that the damage award was not inadequate if plaintiff's mental illness was not causally related to the wrongful garnishments.

[3] A review of the record shows more than adequate basis for the conclusions of the trial judge rather than leaving us with the 'definite and firm conviction that a mistake has been committed', which is necessary for the reversal of a trial *105 judge's findings as 'clearly erroneous'. *Hughson v. O'Reilly*, 7 Mich.App. 324, 326, 151 N.W.2d 888, 889 (1967). The credibility of plaintiff was so impeached as to warrant the conclusions of the trial judge about her testimony. Nor was the trial court obliged to accept the opinions of the psychiatrists who testified on plaintiff's behalf. *Vial v. Vial*, 369 Mich. 534, 120 N.W.2d 249 (1963). That conclusion is particularly appropriate where, as here, those opinions are based on a self-serving history from the plaintiff-patient whose credibility is suspect, and whose recital of past events omits facts significant to diagnosis. *People v. Wingert*, 371 Mich. 264, 123 N.W.2d 731 (1963).

Affirmed.

Mich.App. 1974.
Mileff v. Winkelman Bros. Apparel, Inc.
57 Mich.App. 100, 225 N.W.2d 700

END OF DOCUMENT