

**From:** [Tom Stulberg](#)  
**To:** [Planning](#)  
**Cc:** [Disch, Lisa](#); [Hayner, Jeff](#); [Laura Strowe](#); [Mary Underwood](#)  
**Subject:** Re: C1A and C1A/R staff report comments Correction  
**Date:** Tuesday, December 15, 2020 8:05:22 AM  
**Attachments:** [1140 Broadway March 31 2017 Staff Letter.pdf](#)

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My apologies, the attached March 31, 2017 Planning Department letter is what I was referring to when I erroneously said, "The May 2017 planning report". Sorry if I sent anyone down a rabbit hole looking for this mis-identified document.

It also occurs to me that Planning Commissioners and City Council Members may not have ever read this letter before. It is quite illuminating, so please read it now.

Thanks, and see you tonight,

Tom

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**From:** Tom Stulberg <tomstulberg@hotmail.com>  
**Sent:** Monday, December 14, 2020 8:58 AM  
**To:** [planning@a2gov.org](mailto:planning@a2gov.org) <[planning@a2gov.org](mailto:planning@a2gov.org)>  
**Cc:** [LDisch@a2gov.org](mailto:LDisch@a2gov.org) <[LDisch@a2gov.org](mailto:LDisch@a2gov.org)>; [JHayner@a2gov.org](mailto:JHayner@a2gov.org) <[JHayner@a2gov.org](mailto:JHayner@a2gov.org)>; [Laura Strowe <leksarts@yahoo.com>](mailto:Laura Strowe@leksarts@yahoo.com); [Mary Underwood <marymunderwood@me.com>](mailto:Mary Underwood@marymunderwood@me.com)  
**Subject:** C1A and C1A/R staff report comments

I recommend that the City Planning Commission recommend elimination of C1A and C1A/R. I strongly disagree with Staff's "analysis" which is more of an opinion piece on desired systemic master plan and zoning changes than a thorough analysis of the intent and use of C1A and C1A/R based on existing planning and zoning documents.

C1A/R was improperly used at 1140 Broadway resulting in a highly inappropriate development that does not meet the Master Plan nor the intent of the zoning ordinance. C1A was improperly proposed for 325 E. Summit and was properly rejected. These are the only proposals for the use of these zoning categories in approximately 50 and 20 years, respectively. These zoning categories were not and will not be missed and were even contemplated for elimination in prior more substantive analyses.

A thorough analysis of C1A and C1A/R would include reference to the November 13, 1987 memo from the planning director to the planning commission titled: "**Analysis of the C1A/R, C2A/R, and C2B/R Zoning Districts in the Downtown Area**". This starts on page 8 of the attached letter from a leading expert in this area of the law that was sent to City Council and

the Mayor on November 17, 2017, prior to the council's 7-4 vote on 1140 Broadway. That planning director's report and Susan Friedlaender's letter are essential reading for any current analysis yet are under-referenced in the current planning director's analysis which also lacks reference to other pertinent analyses and reports such as A2D2. The lawsuit filed against the city for improperly rezoning 1140 Broadway also has a wealth of information relevant to a broader analysis of C1A and C1A/R. The whole document is worth reading but jump in at page 19 if you like. It is the first document linked here: <https://lowertownlife.org/read-the-filing>

Highly problematic is the current planning director's report's reference to "campuses". C1A and C1A/R were created and intended very specifically for the Central Campus Business District. The characteristics of the zoning categories were designed specifically with that in mind. They were intended for the Gown Downtown areas of our Town and Gown Downtowns. We have four urban core and urban core transition zoning categories left after a couple were eliminated: D1, D2, C1A, and C1A/R. Moving C1A or C1A/R around to new campuses that have grown over time does not meet the intent of those categories. It is far too great of a stretch to simply allow these zoning categories based on the word campus being in their title and ignoring everything else. Further, the characteristics of the other "campuses" do not resemble the characteristics of the Central Campus Business District. The intent statement for C1A in the UDC is clear: "These districts shall be located in close proximity to the central area of the City."

The Medical Center bears no resemblance to the Central Campus Business District (the South University area and the State and Packard intersection). This is a major employment and service center. It most certainly has medical students, but whether the sign out front or the key on a map says Michigan Medical, Medical Center, or Medical Campus is not the determinant of whether it fits the characteristics intended for C1A and C1A/R. Many people walk or bike to the Medical Center, but it is an island surrounded primarily by parking and residential uses, not by shops and restaurants like the Central Campus Business District is. The "Broadway Area constant stream of non-motorized commuters to the Medical Campus" does not remotely resemble the South University Avenue Area or State and Packard Area. This statement in the current report is startlingly inaccurate. The real Campus Business District sees a constant stream of non-motorized activity throughout the day and evening for people who are going to class, dining, and recreating. The Broadway Area sees its commuters, motorized and non-motorized, going to or from the Medical Center at the beginning or the end of their work shifts. They are not shopping or recreating and going back and forth throughout the day and evening. the traffic to and from the Medical Center during the other hours of the day is primarily motorized and consists primarily of people seeking medical services, not shopping, dining, or recreating. The Medical Center and the Broadway Area are not at all like the Central Campus Business District Areas (South U, State, Packard), even if you use the words Medical "Campus". We can do the same "analysis" for North Campus, the Athletic Campus, the newly acquired Fingerle Luber property, or any other "campus".

(Remember Cooley Law School near Plymouth and Green Roads?)

Ironically, the improper use of C1A/R at 1140 Broadway made the site even less possible to mis-interpret as a campus business district. The sole justification given for stretching the location of C1A/R there was because of the mixed-use capability of that zoning category, yet what was approved is over 99% residential, with two of the three lots having zero mixed-use. The May 2017 planning report correctly identified that Residential Development with only an accessory commercial use as not meeting the Master Plan. So, even this improper justification of stretching the boundary of C1A/R led to an erroneous decision.

Other items in the current report are also troubling and beg a deeper analysis. Our thorough A2D2 process led to well-defined D1 and D2 zoning categories and overlays. D2 was established as the transition from the taller and more intense D1 development to the surrounding neighborhoods. D2's maximum height is 60 feet (without premiums). Why would it make sense to step down from D1 to a max of 60 feet, then back up to 100 feet as proposed in the current report? If the community vision as established in the A2D2 process is no longer what the community wants, should we not have that formal discussion via a Master Plan revision process instead of deciding that here? I think this 100-foot limit is being offered as an alternative to having no set height limit, but it is inconsistent with D2's 60 foot maximum which was not arbitrarily chosen as this seems to be. What redress should a parcel currently zoned D2 seek?

Also, the removal of Premiums could seem to be a reduction in achievable height, but really isn't. Simply set a lower base height and add a premium to get up to a reasonable top limit if we are serious about working towards our sustainability and affordability goals. We recently updated our Premiums ordinance and are in the process of overhauling the Planned Project Modifications ordinance to try to better achieve these goals. The recommendation in this report seems to be moving in the opposite direction, permitting increased density from what is currently available by allowing C1A and C1A/R to expand their "range", but to get nothing in return. That just enriches the landholder, developer, and their lawyers. (Please note that the four zoning categories offering Premiums are D1, D2, C1A, and C1A/R - the town and gown Downtown and Downtown Transition categories.)

In summary, C1A/R and C1A had no business being contemplated for 1140 Broadway and 325 E. Summit, respectively. They have a home and letting them roam conflicts with our planning and zoning documents, both in letter and intent. The proposals made in the current report do not take into proper consideration the existing documents and processes that got us to our current Master Plan and UDC and will result in further improper use. Why? If we want to have better mixed-use zoning options for parts of our city (I do, and I am guessing most on CPC and City Council do too), then let's do it the right way instead of misusing some old categories gathering dust that weren't meant for what we want to do.

Thank you for your consideration,

Tom Stulberg, board member and spokesperson for  
Ann Arbor Neighbors for Responsible Development



## City of Ann Arbor

### PLANNING & DEVELOPMENT SERVICES — PLANNING DIVISION

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**TO:** Ron Mucha, Petitioner  
Tom Covert, Petitioner's Agent

**FROM:** Alexis DiLeo, City Planner

**DATE:** March 31, 2017

**SUBJECT:** **1140 Broadway** Rezoning with Conditions, Site Plan with Planned Project and Landscape Modification Requests (Z17-003, SP17-009)  
Planning Review #2

Planning staff has reviewed the revised materials submitted on March 22 and offer the following comments. As before, your responses and revisions must correct or address comments provided by all service units.

- 1. Required Revisions** – The revised plans acknowledge or address our Planning Review #1 memo except where further discussed below.
- 2. Master Plan** – Staff disagrees with your casual dismissal of the relevancy of Chapter Six Lower Town in the Master Plan: Land Use Element. Just because the Broadway Village at Lower Town PUD was not realized does not mean that the underlying, general land use recommendation and design guidelines are irrelevant, outdated and not worthy of consideration. The detailed statement regarding “the former Kroger site” contains sound, fundamental planning and land use principles that should be taken into account.

Our previous comments paraphrased the specific land use recommendations and design guidelines. Here is the complete recommendation:

*The former Kroger site and surrounding properties are appropriate for a low rise (2-4 stories) to mid-rise (5-8 stories), mixed-use urban village. A redeveloped village center should consist of a mixture of residential, office, retail and public land uses. Residential uses such as townhouses and apartments are appropriate. Neighborhood retail uses will provide an opportunity for area residents to walk to nearby services and minimize the need for off-street parking. Small professional offices will provide opportunities for area residents to walk to work and provide mid-day customers for retailers. Only residential uses are recommended near Traver Creek to minimize the impacts of non-residential uses on the neighbors north of the creek. The height of new residential buildings near Traver Creek should not exceed 4*

*stories in height to minimize visual impacts to adjoining neighbors. Most new buildings in the remaining portion of the village center should be between 3 and 5 stories in height with some buildings as tall as 8 stories. Taller buildings should be slender instead of massive to minimize their visual impact. Buildings that exceed 5 stories in height should have a building scale that is generally consistent with three buildings in downtown Ann Arbor that function as community focal points.*

*Those buildings include the Washington Square Building (200 East Washington), the First National Building (201 South Main), and the Glazier Building (100 South Main). If proportions of buildings exceed five stories in height, the taller portions should also have a building scale similar to these downtown buildings. Taller buildings should provide strong emphasis on an attractive appearance since they will be more visible. Building materials such as brick and stone can enhance the appearance of taller buildings and convey a sense of permanence. The height allowed for mid-rise buildings can encourage redevelopment opportunities while not exceed the height of the two existing mid-rise buildings in Lower Town. A Planned Unit Development should be part of any major redevelopment proposal in the Village Center.*

*Village Center Design Guidelines – the following specific elements should be included in a design for the village center:*

- *Buildings located at or near sidewalks to encourage pedestrian access.*
- *Ground floor retail for some buildings to provide necessary services and promote vitality.*
- *Public plazas and/or village greens to encourage a sense of neighborhood and provide places to relax.*
- *Parking that is provided in on-street locations or underneath or behind new buildings to minimize imperviousness and encourage pedestrian access. Off-street surface parking should be minimized and included shared parking arrangements.*
- *Sidewalks that can accommodate outdoor seating to enhance a pedestrian atmosphere.*
- *Direct pedestrian and bicycle connections to surrounding neighborhoods, downtown Ann Arbor, the Huron River and University of Michigan facilities.*
- *Vehicular access should be provide from Maiden Lane, Broadway and Neilsen Ct.*
- *Restoration of Traver Creek with a pedestrian path provided along the length.*
- *Extensive landscaping should be installed to provide shade and beauty.*
- *Design measures that minimize the amount of vehicular traffic on upper Broadway.*
- *Public art and benches to add elements of beauty and comfort.*
- *Appropriate lighting of public areas.*

- *Additional design guidelines are described on page [54] of this chapter.*

**3. Fundamental Concerns.** Staff has two fundamental concerns with the proposed development. First, the buildings are massive and out of scale with Lower Town. Second, the development is essentially a single use – residential – with an accessory retail space. It is not a mixed use center.

- a. **Massing** – Building A’s footprint is in the ballpark of 80,000 square feet, approaching two acres in area. Buildings B and C’s footprints are in the lower and upper 30 thousands respectively, each closer to a full acre than a half acre. Building A’s diagonal dimension of over 360 feet, twice the 180-foot maximum diagonal allowed East Huron One character overlay district downtown. Building B and C’s diagonal dimensions, roughly 260 feet and 300 feet respectively, also significantly exceed that maximum diagonal dimension. Like the subject site, the East Huron One character overlay district is zoned for mixed uses directly abutting a historic residential neighborhood. The maximum diagonal dimension was introduced in the East Huron One overlay district to ensure new development was slender and minimized impacts to the adjacent neighborhood.

In staff’s opinion, the proposed development does not adequately take advantage of the C1A/R’s lack of an established height limit to create taller, slender buildings. To be clear, staff is not suggesting downtown core heights – but rather eight stories, perhaps even ten stories, along Maiden Lane and two to four stories along Broadway Street and facing Traver Creek better fits the context with the surrounding neighborhood.

The Master Plan specifically identified three existing buildings to emulate. Staff further suggests that the Ashley Mews development is an example of transitional scale from mid/high-rise to low-rise buildings.

- b. **Mixed Uses** – Excluding the parking structure, the proposed development is 99% residential and 1% retail. As stated above, it is not a mixed use center.

Other than two party stores, four restaurants (three of which specialize in take-out and delivery), an a few businesses (bike shop, frame shop, pottery studio), there are no retail uses to serve any of the existing or future residents in the neighborhood. A full grocery supermarket thrived at this site only 10 years ago, without the 600 additional dwelling units proposed and before the expansion of the Kellogg Eye Center and other UM Health System facilities on Maiden Lane. There has never

before been so many residents and employees in Lower Town and the neighborhoods immediately north and so few retail uses.

- 4. Natural Feature Open Space Activity.** Thank you for providing responses to support the proposed natural feature open space activity for removing the existing construction fence and installing a grass paver system for vehicle access to a fire hydrant.

You have expressed interest in adding a paved or woodchip path along the creek as an amenity to the future tenant as well as the surrounding neighborhood. Please note the intent of the natural feature open space, per Section 5:51 of the Zoning Ordinance, is require open space, often referred to as a buffer, adjacent to certain natural features “in order to prevent physical harm, impairment or destruction of or to a natural feature.” And, “prohibited and permitted activities for natural feature open space shall be the same as the prohibited and permitted activities regulated or allowed in or on the natural feature.”

Planning staff will not support any disturbance within the natural feature open space for a paved or woodchip path. A path may be a site amenity and appreciated by the neighborhood but it is not in the public interest to allow disturbance to the natural feature open space to accommodate it. The purpose of the open space is to prevent physical harm, impairment or destruction. Staff does not feel the benefit of a path within the open space is greater than reasonably foreseeable detriments of activity within the buffer, the basic determination of being in the public interest per Section 5:51(6).

The fact that the only place where a path may be located on the current site plan layout is within the natural feature open space reinforces staff’s fundamental concern about the proposed development’s massing. The future land use recommendations and design guidelines, and the public benefits achieved from the PUD zoning district, were immediately dismissed as irrelevant, and little forethought was given to on-site public amenities.

- 5. Planned Project Modification.** Planning staff do not support the request to reduce the front setback for Building A. The solid brick wall, over 80 feet in length and estimated to be eight feet tall, is not in keeping with an active street frontage, urban character, or pedestrian friendly design.
- 6. Site Plan.**
  - a. Please clarify the proposed improvements in the open space of Building C on Maiden Lane. Based on Sheet LA-01 landscape plan it appears to have a wall and a furnished outdoor patio. Is the amenity open to the public, an enclosed private



space? What are the proposed improvements in the center of Building C? Provide a detail.

- b. Please clarify the proposed improvements immediately adjacent to the retail space. Note that sidewalk occupancy permits for outdoor seating or sales are not issued outside of the Downtown Development Authority boundaries.
  - c. The sidewalks within the site serve as the site's dominant areas of active open space for the residents and are likely to be heavily congested. Most of the sidewalks are parallel or perpendicular to parking stalls, as well, and therefore should be widened from five feet as currently proposed to at least eight feet.
  - d. The comparison chart indicates that 1,379 square feet of floor area has been swapped between the residential portion of the development and the parking portion, and the retail portion has remained the same, but the total floor area has increased by 6,000 square feet, from 138,035 to 144,035. Please clarify.
- 7. Building Elevations.** The color perspective renderings provided separately are very helpful to supplement the site plan. However, the drawings provided in the plan set remain hard to read. Please enlarge each elevation and consider providing one full sheet for each building elevation, twelve sheets of elevations in all.

**From:** Ralph McKee <[rmckee2258@gmail.com](mailto:rmckee2258@gmail.com)>  
**Sent:** Tuesday, December 15, 2020 1:50 PM  
**To:** Planning <[Planning@a2gov.org](mailto:Planning@a2gov.org)>  
**Subject:** C1A, C1A/R moratorium discussion

I listened to and spoke at the recent Ordinance Review Committee meeting on the review of the C1A and C1A/R zoning districts and have reviewed the staff recommendation just submitted by Brett Lenart. Though I am not surprised given Mr. Lenart's prior actions regarding these districts, I am still very disappointed in the recommendation. It does not follow the direction given by city council to, essentially, analyze potential restriction or elimination of those districts, and it ignores the similar public input provided at the committee meeting. Instead, the recommendation supports a vague expansion of use of those districts. The recommendation does not properly address 1) the original intent of these districts, 2) the problematic (at best) and arguably illegal use of these districts re the Lowertown and Garnet (325 E. Summit) developments, which resulted in community pushback, a lawsuit, and the council directive, 3) that the use of these districts will allow developers to avoid including affordable units and/or paying into the affordable housing fund, 4) the difficulties inherent in having a district with no geographic boundaries, and 5) the usurping of the master plan process. I ask you to please consider the points addressed below.

Let's start with the history. C1A and C1A/R are "Campus **Business** District" zoning "districts" (emphasis added). They were intended to allow re-zonings for developments near the "central area" of the city, where there was significant foot traffic using the **businesses** already located there. A good description is contained in both the Lowertown lawsuit complaint (para. 112-136, pp. 20-26, attached to Tom Stulberg's letter to you) and in attorney Susan Friedlander's November 2017 letter to city council (also attached to Mr. Stulberg's letter). C1A/R was improperly used at 1140 Broadway, resulting in a highly inappropriate development that does not meet the Master Plan or the intent of the zoning ordinance. C1A was improperly proposed for 325 E. Summit and was properly rejected. These are the only proposals for the use of these zoning "districts" in approximately 50 and 20 years, respectively. These zoning "districts" were not and will not be missed and were contemplated for elimination in prior more substantive analyses.

Approval of the Lowertown development is perhaps the worst zoning decision in recent local history. The lawsuit complaint filed by residents afterward describes the city's pattern of ignoring applicable law, which allowed the developer to build a much bigger, more dense development than any residential zoning allowed, which contained virtually no retail (both of which points violated the master plan, which contemplated a mixed-use "urban village"), and, perhaps most importantly, allowed the developer to avoid paying almost \$9M to the affordable housing fund which would have been required under PUD zoning for that plan. The complaint is essential reading, particularly because this commission's review was directed by council following an agreement between the lawsuit plaintiffs and the city. The recitation of what actually happened (para. 9-56, pp. 2-10) is very illuminating. Regardless of your politics or your general attitude toward development, you should be disturbed by 1) the complete disregard of the applicable standards (see complaint, para. 92-111, pp. 16-20), 2) the fact that the planning department (led then and now by Mr. Lenart) bluntly said in its March 2017 initial report to the developer that the re-zoning was inconsistent with the master plan, and then, for reasons unknown, reversed course and 3) very few affordable units were included (these resulted from separate brownfield negotiations), and no \$\$ went into the affordable housing fund. Amazingly, the affordable housing advocates who vigorously supported the Core Spaces/Library Lot development because of the

potential \$5M going to the affordable housing fund (FROM OUR OWN MONEY - the potential sale proceeds) were silent even though the Lowertown stakes were almost double in amount and, more importantly, FROM DEVELOPER FUNDS. It is worth noting that at a zoning board of appeals hearing regarding a parking variance, the Lowertown developer promised \$1000 "entry-level" units; of course we now know that the cheapest market rate units are almost double that and the average is roughly \$2600.

It is also worth noting that plaintiff's counsel's detailed analysis (attached to Tom Stulberg's letter) was sent to city council after this commission recommended approval of the development, but before council approved it, to educate council. Council didn't listen, and instead approved. Plaintiffs (remember, a neighborhood association, not a rich developer) chose not to sue the developer; to stop the development would have required showing irreparable harm, which would have been very expensive and is a very high bar. Instead, plaintiffs sued the city; the intent being to educate city planners, this commission, and council as to proper application of zoning law and principles.

While the Lowertown lawsuit was pending, the Garnet developer asked for re-zoning to C1A. Despite the Lowertown debacle, and the significant distance from any semblance of campus **business** (seriously, Casey's and the liquor store?), both planning and this commission recommended approval. Fortunately, the former council majority denied approval, solely on the ground that the re-zoning was inappropriate, but suggested that the development might well be approved as a PUD. Eventually, despite Mr. Lenart's view that C1A zoning was more appropriate than PUD zoning, it was approved, resulting in an \$88,000 contribution to the affordable housing fund. The developer was pleased, its representative stating that the \$88,000 contribution was manageable and it would move forward with the project. Fn.1.

Shortly after the Garnet approval, the Lowertown plaintiffs agreed to dismiss the lawsuit, on the condition that council consider having a moratorium on use of C1A and C1A/R zoning to allow this commission to study whether these zoning "districts" should be eliminated, modified or restricted. Anyone watching the council meeting where the moratorium was discussed could only conclude that the council majority was concerned about the abuse of the those "districts" to favor developers and that planning commission should focus on restricting or eliminating them.

At the Ordinance Revision Committee meeting where the moratorium was first discussed, Tom Stulberg and I were the only public commenters. My comments centered on 1) a zoning district with no geographic boundaries and with no master plan revision is inherently problematic; this begs for geographic limitation via a master plan revision, 2) how do you decide which project to approve? What standard is used? "We like it, because it has solar panels? It's close to a medical campus building?" Seriously, what would the standards be? Without standards, it's an open invitation to arbitrary spot zoning all over town. And after a couple are approved, what do you say to the developer who gets denied and threatens to sue because the denial appears arbitrary? If you have no objective standards, it's very discretionary, you're leaving yourself open to being forced to allow everything, and 3) every C1A or C1A/R development which could otherwise be done as a PUD or PPM will end up at market rate with zero \$\$ going to the affordable housing fund. Mr. Stulberg's comments focused on the need to carefully follow the zoning code, which was blithely ignored in the Lowertown debacle. Despite that, both the discussion at that meeting and Mr. Lenart's recent recommendation incongruously focused on potential expansion of the use of C1A and C1A/R.

Our affordable housing crisis was a central issue in the summer primary campaign and the fall millage campaign. All the candidates advocated figuring out a way to get much more affordable housing built,

albeit via varied approaches. The voters approved an affordable housing millage that will strain the budget of many low and middle income homeowners; the rationale was that affordable housing is a CRISIS. And this commission has recently prioritized affordability and sustainability provisions in PPM projects. Candidly, Mr. Lenart's recommendation on C1A and C1A/R is in diametric opposition to affordability goals because if you really want affordability, you should be encouraging PUDs, or other development routes where you actually get affordable housing \$\$.

Lowertown and the Garnet illustrate what will happen if C1A and C1A/R are not dramatically restricted or eliminated. The developments will be high-end until the demand for high-end is satisfied (if it ever is), that's where the profit is. That's not going to change just because a new building is sort of near a campus building.

I hope now you'll see what we are worried about.

1/ The comments made by certain CMs at the approval meeting were revealing. CM Grand complained that the \$88,000 would make the units more expensive. This is inaccurate at best; first, high-end condos aren't priced on a "cost-plus" basis, they are priced on what buyers will pay, and in any event, should we really be concerned about developer profit or a high-end condo buyer having to pay \$8800 more (\$88,000/10 units) rather than getting money into the housing fund? CM Ackerman complained about the delay and expense resulting from the initial rejection of the re-zoning harming the developer, again focusing on the developer's profit interests and ignoring the fact that if the developer had taken an appropriate zoning route initially, no delay would have occurred.

At a 4th ward LWV forum during the summer 2020 primary campaign, former CM Eaton, defending his record on affordable housing, mentioned the \$88,000 contribution from the Garnet project. Former planning commissioner and treasurer for the Eyer campaign commented (falsely) that the contribution might prevent the project from being built. Eyer refused to repudiate Lowenstein's statement, saying it was just "robust public discussion." These statements are included here to show 1) how politicized discussions of affordable housing and development have (unfortunately) become, and 2) the hypocrisy of claiming to be an affordable housing advocate while also encouraging "bending the rules" to approve developments without the otherwise applicable affordable housing fund contributions.