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Honorable Mayor Christopher Taylor and City Council members;

RE: South Pond Village Site Plan

I have been retained by the Woodcreek Homeowner Association to represent its interests with regard to its strong objections to the proposed South Pond Village site plan. On June 21, 2016 the Planning Commission voted 6-1 to recommend denial of the proposed site plan. Previously, on April 7, 2015 the Planning Commission voted 6-2 to recommend denial of essentially the same proposed site plan.

Zoning changes are legislative acts by a municipality. Site plan approvals are administrative acts. The City legislatively zoned the land in question R1B and a developer has the right to develop the land as allowed by R1B (Single-Family Dwelling District) zoning so long as it complies with site plan procedures, rules, and standards.

The Michigan Zoning Enabling Act and to a lesser extent the Planning Act sets forth the rules and procedures for making zoning decisions. However, the rules and procedures for site plan approval are as set forth in a municipality's ordinances.

MCL 125.3501(5) says "(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes." [emphasis added]

Therefore, compliance with the City of Ann Arbor's ordinances are mandatory.

The City of Ann Arbor ordinances with regard to site plans in Section 5.122(3) says:

"(3) Site plans for City Council approval. Except as otherwise provided in this section, City Council shall review and approve or reject a site plan after receiving a report and recommendation from the Planning Commission. Within a reasonable time following the close of the public hearing, the Planning Commission shall make a recommendation to the City Council to approve or deny the site plan. Upon receipt of the Planning Commission's recommendation, the City Council shall approve or reject the site plan within a reasonable time following the close of the public hearing. If approval is conditioned on changes to the site plan, the petitioner shall submit revised drawings with the necessary changes to the

planning manager or designee within 30 days of approval by the City Council or the site plan approval shall lapse. Any changes to a condition placed on the site plan by City Council shall require City Council approval.”

Additionally, Section 5.122(6) says:

“Standards for site plan approval. A site plan shall be approved by the appropriate body after it determines that:

- (a) The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; and
- (b) The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this chapter; and
- (c) The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare.”

Significantly, please note the City’s ordinances require compliance:

1. With city ordinances, standards and regulations; and
2. That the development not cause a public or private nuisance; and
3. That the development not have a detrimental effect on the public health, safety or welfare.

However, as to natural features, as it is impossible not to disturb some natural features, the ordinance only requires a development to limit the disturbance to natural features to the minimum necessary to allow a reasonable use of the land.

The Planning Commission correctly voted to deny recommending approval of site plan to City Council. Clearly, the site plan did not comply with the mandated requirements set forth above and no findings of fact have been or can be made that it does.

The Planning and Development Services Staff Report for the June 21, 2016 says that:

“Staff recommends that this petition be approve because it complies with all the applicable local, state, and federal laws, ordinances, standards, and regulations; the development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land; would not cause a public or private nuisance; and would not have a detrimental effect on public health, safety, or welfare.”

However, the report fails to address the serious questions regarding the failure to meet the City’s own road size standards and issues regarding the public health, safety, or welfare. Simply parroting the conclusions required by the ordinance are not sufficient.

Regarding the failure to meet the standards required by Section 5.122(6)(a):

The City of Ann Arbor Master Plan, Land Use Element, dated November 5, 2009, says regarding Neighborhoods:

“Some specific community design techniques for neighborhoods can help to achieve many of the goals and objectives of this plan. The following design concepts can help minimize negative impacts to natural systems, improve pedestrian access, reduce imperviousness, lower housing costs and promote a greater sense of community. These design elements should be incorporated where applicable, for new or redeveloping residential communities:

[. . .]

Narrowed neighborhood streets – providing a hierarchy of street widths including lanes, alleys, minor streets and collector street that reflect the amount of daily vehicular trips would help reduce travel speeds, reduce unnecessary imperviousness, create a more pedestrian friendly environment and reduce development costs, which can help lower housing costs.

Narrowed right-of-way – reducing the width of right-of-ways along neighborhood streets can ensure that land is utilized more efficiently, reduce development costs, reduce housing costs, reduce imperviousness by reducing driveway length, and provide a greater sense of community.”

The City also adopted Street Design Standards and, as should be the case, the Street Design Standards are consistent with the Master Plan.

The Street Design standards includes the following classification of streets:

“Minor local – The sole function of these streets is to provide access to immediately adjacent properties. These streets are typically short looping streets or cul-de-sacs. These streets shall carry a maximum average daily traffic (ADT) of 100 trips/day, and in residential areas shall serve a maximum of 10 dwelling units. The minimum design speed for these streets shall be 25 mph. These streets will generally not have speed limits posted, but if so will be 25 mph.

Local - The sole function of these streets is to provide access to immediately adjacent properties. These streets shall carry maximum average daily traffic (ADT) of 1,000 trips/day, and in residential areas shall serve a maximum of 75 dwelling units. The minimum design speed for these streets shall be 30 mph. These streets will generally not have speed limits posted, but if so will be 25 mph.

Residential Collector – The function of these streets is to serve traffic between local and arterial streets, and provide access to immediately adjacent residential properties. Streets

serving over 75 dwelling units shall be classified as residential collectors. The minimum design speed for these streets shall be 35 mph. These streets will generally be posted at 30 mph.”

The Street Design standards also require following minimum widths:

“Minor Local”: 24 feet

“Local”: 28 feet

“Residential Collector”: 33 feet

The roads in Woodcreek are 28 feet in width which are consistent with the Master Plan for Neighborhoods and specifically limited by the Street Design Standards to be either “Minor Local” or “Local” streets.

Therefore, the site plan as presented, which would allow access to the proposed South Pond Village through Woodcreek violates the City's own Street Design standards in that the streets in Woodcreek would be being used to access properties not immediately adjacent, and would also exceed the maximum number of dwelling units. Pursuant to the City's own standards a Residential Collector road is required for this purpose and capacity.

Furthermore, altering the hierarchy of streets as set forth in the Master Plan would be against its intent.

Regarding the requirement that “The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare” as required by Section 5.122(6)(c):

Residents have identified numerous examples to the City of detrimental effects on the public health, safety or welfare which have not been sufficiently addressed, including:

1. The congestion on Washtenaw Avenue and the difficulty entering Washtenaw from Chalmers;
2. That Woodcreek traffic only has a single entry/exit point and that adding the additional homes from South Pond Village to this single choke point would make the potential for disaster even worse;
3. The poor conditions of Chalmers presently and the safety of its use;
4. The connection of South Pond Village through Woodcreek which is contrary to the intent of the Master Plan, contrary to the City’s own Street Design Standards, and would create additional dangers to the neighborhood as always results from an increase in traffic.

Clearly, the Planning Commission found that these issues were not addressed, it denied recommending the site plan twice. The City Council should not approve the site plan as submitted. How can the City Council make the determination required by its ordinance that

there would not be any detrimental effect on the public health, safety or welfare, without concrete answers and solutions to these concerns.

During Commission Discussion at the June 21, 2016 Planning Commission, the minutes included the following exchange:

“Carlisle responded that this plan and subsequent plans and related traffic impact studies have been reviewed by the City’s traffic staff multiple times. He said he would read their feedback directly: ‘The one egress point on Chalmers and the existing Woodcreek Drive will remain as an access point, thus providing a second access point if one side of the island becomes blocked. Though this approach is not the staff preferred approach, it has been utilized as a provision for emergency access in other developments, including Woodcreek. There is one other additional access point that is physically viable. The 50 foot wide city-owned right-of-way along the western edge of the Arborland site as originally envisioned could provide one-way southbound traffic to the existing traffic signal at Washtenaw, though it would require significant redesign of Arborland driveways and the Pittsfield-Washtenaw intersection. The petitioner explored the option at the request of the Planning Commission and the resulting traffic impact study found there was no measurable improvement of the Chalmers-Washtenaw intersection as a result...”

The above quote is very telling.

First, the comment that the proposed access at Chalmers is not the staff preferred approach implicitly acknowledges the dangers of a single access point divided into two by merely an island. Further, there is no discussion of the greater danger created by adding more homes to that limited access.

Second, the comment says that “There is one other additional access point that is physically viable” and then discusses the 50 foot wide city owned property along the edge of Arborland. That comment implies that there is no other physically viable access—which is false. The access to Huron River drive is physically viable.

Third, the comment says that petitioner explored the option of a using the 50 foot easement but that “the resulting traffic impact study found no measurable improvement to the Chalmers-Washtenaw intersection as a result.” The comment completely ignores the other health, safety and welfare benefits of a potential second exit to the development.

Finally, the comment in support of its position says “that the connection may negatively affect other intersections...” The City Council should take notice of the word “may” rather than the use of the word “would.”

Clearly, based on the site plan and facts presented to the City Council, the City Council cannot make the determinations required by Section 5.122(6)(c).

Therefore, to comply with the City's own ordinances and standards, it would be appropriate to either deny the site plan request or pursuant to Section 5.122(3) approve the site plan but condition that approval on the developer providing a different means of access to the proposed development.

However, based on the fact that City Council cannot make the determinations required by Section 5.122(6)(c), the City Council should not approve the site plan as presented.

Sincerely,



Jesse O'Jack
Attorney for the Woodcreek Homeowner
Association