



# City of Ann Arbor

301 E. Huron St.  
Ann Arbor, MI 48104  
<http://a2gov.legistar.com/Calendar.aspx>

## Meeting Minutes City Planning Commission

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Tuesday, May 1, 2012

7:00 PM

City Hall, 301 E. Huron Street, 2nd Flr.

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Commission public meetings are held the first and third Tuesday of each month. Both of these meetings provide opportunities for the public to address the Commission. Persons with disabilities are encouraged to participate. Accommodations, including sign language interpreters, may be arranged by contacting the City Clerk's Office at 734-794-6140 (V/TDD) at least 24 hours in advance. Planning Commission meeting agendas and packets are available from the Legislative Information Center on the City Clerk's page of the City's website (<http://a2gov.legistar.com/Calendar.aspx>) or on the 1st floor of City Hall on the Friday before the meeting. Agendas and packets are also sent to subscribers of the City's email notification service, GovDelivery. You can subscribe to this free service by accessing the City's website and clicking on the red envelope at the top of the home page.

These meetings are typically broadcast on Ann Arbor Community Television Network Channel 16 live at 7:00 p.m. on the first and third Tuesdays of the month and replayed the following Wednesdays at 10:00 AM and Sundays at 2:00 PM. Recent meetings can also be streamed online from the CTN Video On Demand page of the City's website ([www.a2gov.org](http://www.a2gov.org)).

### 1 CALL TO ORDER

*Chair Mahler called the meeting to order at 7:05 pm.*

### 2 ROLL CALL

*Rampson called the roll.*

**Present** 8 - Pratt, Mahler, Woods, Derezinski, Briggs, Westphal, Giannola, and Adenekan

**Absent** 1 - Bona

### 3 APPROVAL OF AGENDA

**A motion was made by Adenekan, seconded by Westphal, that the agenda be approved. On a voice vote, the Chair declared the motion carried.**

### 4 INTRODUCTIONS

### 5 MINUTES OF PREVIOUS MEETING

5-a [12-0615](#) City Planning Commission Meeting Minutes of March 20, 2012

**A motion was made by Briggs, seconded by Giannola, that the minutes be approved by the Commission and forwarded to the City Council. On a voice**

vote, the Chair declared the motion carried.

**6 REPORTS FROM CITY ADMINISTRATION, CITY COUNCIL, PLANNING MANAGER, PLANNING COMMISSION OFFICERS AND COMMITTEES, WRITTEN COMMUNICATIONS AND PETITIONS**

**6-a City Council**

*Derezinski said that Council has not met since the last Planning Commission meeting. He reported that the recommendation of City Council that was submitted to the State Liquor Control Commission was honored and they took away the license for Dream Night Club.*

**6-b Planning Manager**

*Rampson said due to the lengthy agenda she would update the Commission at their Working Session, next week.*

[12-0614](#) May 2012 Meeting Calendar

**Received and Filed**

**6-c Planning Commission Officers and Committees**

**6-d Written Communications and Petitions**

[12-0623](#) Various Correspondence to the Planning Commission

**Received and Filed**

**7 AUDIENCE PARTICIPATION (Persons may speak for three minutes about an item that is NOT listed as a public hearing on this agenda. Please state your name and address for the record.)**

*None*

**8 PUBLIC HEARINGS SCHEDULED FOR NEXT BUSINESS MEETING**

[12-0624](#) DTE Buckler Substation Site Plan for Planning Commission Approval - A proposal to construct a new substation on the east side of 984 Broadway Street. A total of 800 cubic yards of fill is proposed to be added on the 0.45 acre site in the floodplain of the Huron River, which is proposed to be offset by removal of 1204 cubic yards of material up-stream from the site. A variance from the conflicting land use buffer requirement is being requested to allow the landscape buffer to be planted on the adjoining Riverside Park property.

MichCon Remediation Site Plan for Planning Commission Approval - A proposal to perform required soil and sediment remediation of the historic manufactured gas plant facility at 841 Broadway Street. The project site is within the 100-year floodplain and within the bank and channel of the Huron River, adjacent to the Broadway Site. The located site is on the eastern parcel, approximately 8.5 acres of the total 15.95

acres parcel.

Knight's Market and Spring Street Properties, Rezoning and Site Plan for City Council Approval 418 Miller Avenue, 306-310 Spring Street - A proposal to rezone 306 and 310 Spring Street from R2A Two-Family Residential Dwelling to C1 Local Business district, and a site plan for an addition to the Knight's Market at 418 Miller Avenue and to convert the existing structure at 306 Spring Street to a bakery, including landscaping, parking lot and storm water management improvements to the entire 0.41 acre site.

Phantom Fireworks Temporary Retail Sales Special Exception Use for Planning Commission Approval - Phantom Fireworks is proposing a 40 x 40 foot tent and an 8 x 40 foot storage pod in the parking lot of Colonial Lanes at 1950 South Industrial Highway for temporary outdoor sales. They propose to sell fireworks annually from June 18th through July 13th. The tent would be setback 25 feet from South Industrial Highway and will take up 24 parking spaces on site, leaving 203 parking spaces for the bowling alley/Cubs A.C on this 2.96 acres site.

Wintermeyer Parking Lot Expansion for Planning Commission Approval - A proposal to install 20 additional parking spaces at 2144 South State Street by converting the existing surface detention pond to an underground system on this 1.9 acres site

*Mahler read the public hearing notice as published.*

## 9 UNFINISHED BUSINESS

### 12-0622

Maple Cove Apartments and Village Site Plan for City Council Approval - 2.96 acres site at 1649 North Maple Road, between North Maple Road and Calvin Street, north of Miller Road. A Rehearing of a proposal to construct two new 18-unit, 3-story apartment buildings with a 64-space parking lot, and a private street serving 7 new single-family dwellings. Access to the apartment buildings and the private street will be provided separately from North Maple Road. Staff Recommendation: Approval

*Kowalski gave the staff report.*

**Moved by Westphal, seconded by Pratt, that the Ann Arbor Planning Commission hereby rescinds its March 20, 2012 motion regarding the Maple Cove Apartments Site Plan and Development Agreement and hereby moves to reopen the public hearing regarding the Site Plan and Development Agreement now that notice has been mailed to all required neighboring property owners and occupants. On a voice vote, the Chair declared the motion carried.**

**Yeas:** 8 - Evan Pratt, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Nays:** 0

**Absent:** 1 - Bonnie Bona

#### *PUBLIC HEARING:*

*Alice Boss, 1719 Calvin Street, stated that she lives directly across the street from the proposed development. She brought concerns regarding the new development in relationship to living in a floodzone and the migratory birds and the wetlands. She said she was concerned about the curb cuts on Calvin Street and the green space and the noise. She said she had questions about the landscaping and about future single-family homes along Calvin Street. She said it was not in continuity with her neighborhood in general. She also had concerns about density in the neighborhood,*

adding that they have 1-acre lots or larger and the development will substantially degrade quality of life because of noise, traffic, light, crime and over-density.

Carol Starnes, who lives just north of the project on Calvin Street, said she has concerns about density. She asked what will happen with the storm water, adding that they have clay soil and she doesn't want flooding. What asked what guarantees do they have that the problem won't get worse. She said the density of seven houses on less than two acres, when most of the existing houses on Calvin Street are on half to one-acre lots, together with the two apartment buildings on two acres will bring high density to the area. She asked about the backyards of the proposed houses and since there won't be any access, will they be looking at their backyards. She asked if there will be a buffer or an ugly fence or landscaping and if there will be a guarantee. She said she understands the developer can legally build within five feet of the property line and having a two-story house next to hers would be difficult. She said she moved to the area because it was rural.

Cheryl Shanalo Brown, 1761 Calvin Street, said shame on the Commission for not notifying the neighborhood as they should have and infringing on their rights to due process. She said Calvin Street is considered a private street with a shared driveway and you will need permission to enter or exit the street. She said she would prefer to see some type of fence installed so they don't have to look at the development. She asked if the easement started from the middle of their driveway or from the edge of the property. She added that she feels the developer's attitude is an all-take and no-give attitude in regards to the park contribution.

Pete Miller, 1844 Calvin Street, said his concern is water issues. He said he has lived there for twenty-five years and his sump pump runs continuously. He said everyone living on Calvin Street is familiar with the drainage problem in their backyards, adding that it is a bog. He said the WCWRC hasn't done anything in all these years so why would they do something now. He said Joe's garage was under water and the developer should have to tie into the City system to drain the whole area.

Stephanie Raupp, 1680 N. Maple Street, stated that she attended the first meeting and every neighbor in the area is opposed to the apartment portion of this plan. She said she feels it's a bait and switch, since when the property was earlier rezoned by another developer, Robbie McGowen, the plan he showed was elaborate, with lots of open space, beautiful buildings, and zoned as office with lofts above. She said it was nothing like the density of the proposed development, and the reason he was allowed to rezone was because of this plan. She said this developer won't even put in sidewalks and houses in the area have high school students. She said the developer owes them sidewalks, greenery and open space. Pavement and water run off needs to be addressed, and the proposed parking lot needs to be revisited. She said sump pumps in the area run constantly and they need to realize they have adjacent wetlands.

Brian Biggs, 2661 Woodrow, said has to go down Calvin to get to his house and his biggest concern is with the additional 100 cars coming out onto Maple Avenue since every morning there is a back-up all the way to Miller Avenue; traffic is ridiculous. He said the kids living in the building have to get across the road to get to high school or other schools. He said everyone wants to build on the old garage lot on Maple Avenue, with contaminated black soil. He said kids will be playing in the dirt and we need to be thinking past the dollar.

Noting no further speakers, the Chair declared the public hearing closed.

**Moved by Derezinski, seconded by Giannola, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the**

**Maple Cove Apartments and Maple Village Site Plan and Development Agreement, subject to the combination of parcels and recording of an access easement prior to issuance of building permits.**

*COMMISSION DISCUSSION:*

*Derezinski noted that density was a major concern with the speakers. He asked staff if this comports with the zoning law.*

*Kowalski said yes, the proposal complies with the Office district, which allows residential use.*

*Derezinski asked about contamination of soil.*

*Jamie Gorenflo, project engineer for Maple Cove, said that a Phase I base environmental assessment was conducted, and dirty soil was found and cleaned up through remediation in Phase II.*

*Derezinski asked about the water runoff.*

*Kowalski said that the proposed design will contain the drainage water on site, and they will detain historical drainage in addition to new imperviousness. He said the developer has received preliminary approval from Washtenaw County Water Resources Commissioner.*

*Pratt said that from the plans it looks like storm drainage goes from Calvin to North Maple. He asked if there is a connecting pipe somewhere.*

*Kowalski said that storm water will flow into the underground storage basin. He said when it goes into the street it will go into the Garden Homes drainage district.*

*Pratt said he had concerns about the two proposed driveways located so close to each other.*

*Pratt asked if there were soil boring samples provided to the Commission.*

*Gorenflo responded that soil borings just came in and there doesn't seem to be any groundwater issue. He said they will be containing drainage from the site and the water flow on the site is basically northwest to southeast. He said water is exiting the site to the southeast, under Maple Road to the Garden Homes Drainage District and then flows to the south.*

*Pratt asked if there are basements proposed in the development.*

*Gorenflo said that they don't know for the single-family parcels, but for the apartment buildings there is a small basement intended for mechanical equipment which doesn't cover the entire length of the building.*

*Pratt said this sounds like it won't make things worse for the neighbors and it will get the water away. He said he has concerns if there is water on the surface since that means there is usually water in the ground and he felt it wasn't advised to house mechanical equipment in wet basements.*

*Woods asked for clarification of groundwater flow, related to the Gelman contamination.*

*Gorenflo clarified that he was talking about surface water conditions, since they have*

*no idea where ground water is flowing.*

*Woods asked about the Phase I clean up and if the results and if information on the clean up had been provided to staff.*

*Gorenflo said he did not have specifics, more than he was informed that a Phase I and II were completed on the site before the sale was finalized. He said he was not privy to what the recommendations were.*

*Woods asked if the petitioner was present.*

*Gorenflo said no.*

*Woods said she has a concern about the lack of sidewalks for the single-family homes and isn't comfortable knowing that there won't be sidewalks.*

*Gorenflo said that the speed limit in the driveway will be posted for 5 mph with other speed regulating devices like speed-bumps. He said that if a sidewalk was provided, there is no sidewalk on Maple Avenue to connect to. He noted that they are proposing a sidewalk in front of their property. He said the developer has heard their concerns but has opted not to install a sidewalk.*

*Woods said that if the sidewalk was provided, this would be addressed in the future.*

*Woods asked if the residents on Calvin Street are township residents.*

*Kowalski said yes.*

*Woods said she was glad to hear the issues raised. She said she is not confident this project will not raise a lot of concerns for residents in the area. She said she will not support the project, based on issues raised by neighbors. Woods said the unwillingness of the developer to work with the neighbors and the Commission is also a major concern for her.*

*Briggs asked staff for clarification on the landscape buffer of the development from Calvin Street.*

*Kowalski said the required buffer is along the parking lot in the Office zoning, but there is no buffer required from the single family zoning on Calvin Street, adding that there is quite a bit of existing vegetation from Calvin Street.*

*Briggs asked if they will be able to look into the backyards of the residents on Calvin Street.*

*Kowalski said they will front along Maple Cove Court.*

*Briggs said the developer has not made an attempt to fit into the surrounding neighborhood and meet the basic safety needs of their own residents. She said this is a problem in the code, looking back at the past rezoning that was done and the previously proposed projects for the site. She felt what the neighbors are getting is not in line with past project. She asked if there is any way to incorporate any recommendations into the supplemental regulations in order to address the noted grievances.*

*Kowalski said from a staff standpoint, no, since this is not a PUD. He said the comments echoed staff's concerns, but the developer opted not to incorporate the*

recommendations. He reiterated that the project does meet the City code. He said they could put things into the development agreement but ultimately the developer would have to agree to those items before it was approved by City Council.

Briggs asked for recommendations from staff.

Rampson said neighbors and neighborhood associations can meet with the developer to discuss future options as the project moves along.

Mahler clarified that it is not staff's role to be an advocate for any particular group.

Derezinski said that there are things that everyone would want differently on each project, but the question remains if it comports with our zoning ordinances. He asked staff if the City can require the developer to put in sidewalks along the driveway?

Kowalski said, no.

Derezinski asked if they can have two curb cuts.

Kowalski said, yes.

Derezinski said this becomes a dilemma for the City, because if the project complies with City code, they must follow the law and approve the project.

Westphal asked if access to clean-up documentation of the contamination was available.

Kowalski said he can request the information from the developer, adding that he isn't sure if the information would be confidential, but if not, he could provide information as necessary. He said he wasn't sure if the County may have some information in databases.

Rampson said since contamination isn't regulated at the local level, the City doesn't require documentation of clean-up except in projects that are requesting Brownfield funding.

Westphal asked if the site could have been identified as a contaminated site.

Rampson reiterated that the City has no regulatory authority, but usually former auto repair shops don't qualify as contaminating sites, as sites with underground storage tanks might.

Westphal asked to whom should enquiries be directed.

Rampson responded the Department of Environmental Quality [DEQ].

Westphal asked about sidewalks along private streets and why the code set the trigger at seven units.

Kowalski said he wasn't sure, but in this project the Planning staff had recommended installation of sidewalks. He clarified that the developer must put in sidewalk along the Maple Road frontage.

Westphal said that speaks to why it is important that the public review the zoning information of allowable uses in neighboring districts to see what can be built next to them. He said it is a difficult process for the City Planning Commission to do the

Master Planning and it is a struggle for the Planning Commission that these issues arise only when new development is proposed. He said he didn't have any consolation for those who have debated the density of the project, more than suggesting citizens keep in touch with their ward/Council representatives, since once zoning is in place, he feels it is his obligation to follow through. He added that if they want to change things, they can change city code in the future.

Adenekan agreed that the plan meets the code. She said at the last meeting, the petitioner spoke of a rooftop deck, and she asked for clarification and more details on the deck.

Gorenflo said that the intention is for a multi-functional space for residents to use as desired. The space is closer to 2,000 square feet per building, so residents could use space for picnics or lounging.

Adenekan asked if the apartment buildings would have basements.

Gorenflo said, no, only for mechanical equipment.

Pratt asked about the eight units and that he felt it was standard that all new developments have sidewalks installed these days.

Kowalski explained that the code reads, 'driveway serving eight or fewer'. He said the use doesn't matter so much as how many units it is serving.

Pratt said that if the traffic engineer thinks that there should be one driveway, there usually is a reason for such a recommendation, and from a health, safety and welfare aspect it requires attention. He said we have obligations as well as rights to consider. He had concerns regarding conflicting turning movements with two driveways only 150 feet apart. Pratt said the traffic engineers were right to cite access management. He said he would like to propose an amendment to the motion that would condition approval on a combined driveway or table to allow the petitioner to respond.

**Moved by Pratt, seconded by Woods, to amend the motion to add to the end of the motion 'subject to revising the site plan to require a single curb-cut.**

Derezinski asked if such a proposal would violate our zoning law.

Rampson said the petitioner is allowed two curb cuts per the code but she believed the traffic engineer has the discretion to determine if he feels it would be a traffic hazard.

Kowalski explained that City Traffic Engineer, Pat Cawley, had determined through his review that two curb cuts are allowed per City code but he would recommend that they be combined. Cawley had mentioned that his only concern with the combination was that you wouldn't want them to be combined in the center of the site because then you would most likely have the single family traffic passing through the parking lot of the apartment buildings.

Derezinski said he was troubled over the issue and the only way to get the one curb-cut was over the threat to health, safety, and welfare. He said it was a fairly high standard to meet and the only way out was for staff to determine if that standard had been met or not.

Derezinski said if the Commission doesn't have the information right now, then he would not want to propose that until they have the information from traffic engineer, because he felt they were on tentative ground until they had all the information necessary to make a decision. He said he would recommend postponement.



Woods said that under staff comments, traffic engineer Cawley recommended combination of curb-cuts. She said if someone is coming out of the drive from the single-family units and turns right, and someone is coming out of the multi-family turning left, there are potential conflicts. She said she would be fine receiving more data but as someone who uses that area's streets, she knows how busy it gets, especially given the close proximity to Skyline High School which sees peak volumes. She said she would feel comfortable taking another look before making a recommendation.

Mahler said the concern for him is procedural. He felt that by adding to the motion that the curb cuts should be combined, they would be amending the site plan based on health, safety and welfare, without giving the petitioner an opportunity to rebut. He reiterated his hesitation to amend the motion because it would be taking the site plan out of the petitioner's hands. He said it would be more procedural tasteful to him to take a vote on the first motion and voting it down and then asking the petitioner if they are willing to amend it.

Derezinski said he agreed, noting the importance of the need for documentation why the Commission took the action they did. He said he would go for postponement.

Westphal said it is unfortunate that the petitioner is not in attendance to work with the Planning Commission on this matter, and he would support a postponement to allow the petitioner an opportunity to discuss the matter.

**Pratt withdrew his motion.**

Giannola added that she would also support postponement to get more information on the topic.

Adenekan said she would support postponement.

Briggs said that the petitioner did have the opportunity to respond to the concerns and she was dismayed that they didn't take the time to come to the meeting when the community members have taken the time to attend a meeting. She said she recognize that City code allows the curb-cuts and we can't anticipate every situation around the City. Briggs said the development is close to schools so the issue of health, safety and wellness does come into play at this location.

Mahler said the petitioner is not under any obligation to provide anything more.

Gorenflo said that the developer is very specific in wanting to maintain the two separate curb cuts from a marketing standpoint and in creating the identify of the single-family homes and the multi-family buildings. He said the traffic engineer has said in his recommendation they are entitled to two curb-cuts and his preference would be to combine them, but they are under no obligation to do so. He said he is 90 percent sure the petitioner will not change his mind on this issue.

Giannola said she would like to postpone in order to wait for more information from the traffic engineer that could clarify how big of a concern is it to have two driveways, for the sake of health, safety and welfare.

Woods referenced the staff report noting that the traffic engineer said it is advisable to combine the curb-cuts. She stated that she was very frustrated in hearing the concerns and the possibility that someone could get hurt due to the two curb-cuts being located too close together and given the recommendation from the City traffic engineer and then to hear Maple Cove development's representative state that it is a

marketing issue. She said she is not convinced that there are not health and safety issues in having the two access points.

**Moved by Pratt, seconded by Adenekan, to postpone this petition indefinitely to get clarification from the traffic engineer as to the level of concern for the two curb-cuts.**

*Derezinski clarified that the postponement is only for this particular issue, that they are seeking information on only the one issue of the concerns of one vs. two curb-cuts and when the item returns that will be the only issue of discussion.*

*Woods said that aside from that, there may be other issues that may sway a person's vote. She asked if members of public could speak on the issue at subsequent public hearing.*

*Mahler said that he believed they would reopen the public hearing.*

*Westphal asked if the petitioner in theory would consolidate the curb-cuts, would that raise the sidewalk issue because it's accessing a greater number of units.*

*Rampson said they would have to review the code and get back to the Commission on that possibility.*

**On a roll call, the vote was as follows with the Chair declaring the motion carried.**

**Yeas:** 7 - Evan Pratt, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Nays:** 1 - Eric A. Mahler

**Absent:** 1 - Bonnie Bona

**10**     **REGULAR BUSINESS - Staff Report, Public Hearing and Commission Discussion of Each Item**

(If an agenda item is tabled, it will most likely be rescheduled to a future date. If you would like to be notified when a tabled agenda item will appear on a future agenda, please provide your email address on the form provided on the front table at the meeting. You may also call Planning and Development Services at 734-794-6265 during office hours to obtain additional information about the review schedule or visit the Planning page on the City's website ([www.a2gov.org](http://www.a2gov.org).)

(Public Hearings: Individuals may speak for three minutes. The first person who is the official representative of an organized group or who is representing the petitioner may speak for five minutes; additional representatives may speak for three minutes. Please state your name and address for the record.)

(Comments about a proposed project are most constructive when they relate to: (1) City Code requirements and land use regulations, (2) consistency with the City Master Plan, or (3) additional information about the area around the petitioner's property and the extent to which a proposed project may positively or negatively affect the area.)

**10-a**     **12-0616**

Master Plan Review

As part of its annual review, the Planning Commission is seeking comments about the City Master Plan, including elements that should be studied for possible change or new elements that should be added to the master plan. This information is

important to the Planning Commission in setting its work program for the upcoming fiscal year. The adopted plan elements can be found on the City's website, <<http://www.a2gov.org/government/communityservices/planninganddevelopment/planning/Pages/MasterPlans.aspx>> . Staff Recommendation: Postponement

*PUBLIC HEARING:*

*Rampson gave the staff report.*

*Noting no further comment, the Chair declared the public hearing closed.*

**Moved by Derezinski, seconded by Pratt,**

**RESOLVED, That the Ann Arbor City Planning Commission hereby approves the "City of Ann Arbor Master Plan Resolution" and the "City of Ann Arbor Resource Information In Support Of The City Master Plan Resolution," dated May 1, 2012.**

**Moved by Pratt, seconded by Derezinski, that this item be postponed until after the City Planning Commission's next working session. On a voice vote, the Chair declared the motion carried.**

10-b [12-0617](#)

FY 2013-2018 Capital Improvements Plan (CIP) - The FY2013-2018 CIP is comprised of updated financial data for FY2013 contained in the approved FY2012-2017 CIP. Upon adoption by the City Planning Commission, the CIP becomes a supporting document for the City's master plan. The CIP is also used as the source document for the City's capital budget planning. Staff Recommendation: Approval

*PUBLIC HEARING:*

*Rampson introduced Cresson Slotten, the manager of the Systems Planning Unit, to the Commission.*

*Slotten presented the FY2013-2018 Capital Improvements Plan to the Commission.*

*Slotten explained that every two years, the city looks at 13 separate asset areas, and staff teams put together list of needs through a process very similar to the budget review process. Projects are prioritized through this process, and are then aligned with resources. He said the full plan was completed about a year ago. This year, they have an adjustment process that focuses on the first and second year of the plan, which corresponds with the budget. He said the adjustment focuses on project scope and budgets. He noted that looking ahead to the fall and winter, they will be doing a new plan. He introduced Deb Gosselin, the new staff member in the Systems Planning Unit who will be leading the Capital Improvements Process in the fall.*

*Noting no further speakers, the Chair declared the public hearing closed.*

**Moved by Westphal, seconded by Derezinski, the following resolution:**

**Whereas, Section 1:185 of the Ann Arbor City Code requires that the City Planning Commission annually prepare a Capital Improvements Program for the ensuing six fiscal years;**

**Whereas, The FY2012-2017 Capital Improvements Plan (CIP) was approved by the Ann Arbor City Planning Commission on January 4, 2011 as a supporting document for the City's Master Plan; and**

**Whereas, The FY2012-2017 CIP was approved by the Ann Arbor City Council on**

February 7, 2011 as the basis for the FY2012 Capital Budget which, with the exception of the Airport Runway Safety Extension Project which was removed from the FY2012 Capital Budget;

Whereas, The second year of the FY2012-2017 CIP has been adjusted based on current conditions as the FY2012-2017 CIP as related to the adjusted FY2013 Capital Budget to be approved by the City Council; and

Whereas, A duly-noticed public hearing was held by the City Planning Commission on May 1, 2012;

**Resolved, That the City Planning Commission hereby approves the FY2013-2018 Capital Improvements Plan as a supporting document for the City's Master Plan.**

*COMMISSION DISCUSSION:*

*Giannola said that she has thought of the Capital Improvements Plan as including all possible projects that could be done in the City, but when the City removed the airport runway last year, it made it look like the CIP included all approved, or realistic, projects. She asked for clarification on the correct way to view the plan.*

*Slotten said the plan is a list of identified needs, whether they are funded or not. He explained that the removal of the runway project was specific action by City Council. He said it was not technically removed from the plan, but removed from the budget, since City Planning Commission approved the plan.*

*Giannola asked if it was standard for items to be removed from the list.*

*Slotten said yes.*

*Giannola clarified that even if items are in there, they will not necessary be done.*

*Slotten said correct.*

*Derezinski asked about public hearing notice provided.*

*Slotten said the public hearing notice was within the standard timing as well as being posted on the City's website approximately one month in advance of notices.*

*Derezinski said that notices went out to all neighborhood groups and others interested in Planning issues, but to date no public comments have been received. He thanked staff for their efforts noting their great effort in prioritizing City projects.*

*Woods asked about the South State Street/Ellsworth round-about project, and possible additional funding it might have received to put the project on fast track.*

*Slotten said that location is the corner of the City's political and zoning boundary as well as the street network. He explained that beyond that intersection is the Washtenaw County Road Commission's jurisdiction. He said it was the Pittsfield Township Costco development and its impacts that lead to the proposed changes to the intersection. He said the project was in the CIP last year, but since Costco hadn't been evaluated yet, it wasn't high on the list; but they now have clear funding from the Washtenaw County Road Commission, MDOT, the City of Ann Arbor, grant funding, as well as the developer paying for the main design.*

*Woods said the CIP showed the City was contributing \$ 2 million towards to the*

*round-about and she wanted to know what the other partners were contributing.*

*Slotten clarified that the project cost listed in the CIP is the total cost of the project, so the City's portion for that item is a fraction of the \$2 million. He said there is more detail available on the individual project sheets, which can be found on the website.*

*Briggs asked for more information on the unfunded needs list, which indicated 90% of alternative transportation projects are unfunded.*

*Slotten said that when the budget and CIP were first brought together, it was intended that the CIP be a fiscally constrained plan. He explained that very quickly they recognized that many needs without funding sources were not included in the plan. When they made the shift to include all the needs into the CIP, whether funded or not, the area of alternative transportation was brought in. Unfortunately, a lot of those visions and initiatives are large-scale, long-term and expensive needs. He said many of the projects are in the early study stages and are incrementally funded.*

*Mahler asked about the specified total funding increase of 18%, with five items on the list and the Wastewater Treatment Plant project funding of \$4 million. He asked for more information on the project.*

*Slotten said he can't speak to the added cost, but it is the largest capital improvements project that the city has ever undertaken, at \$136 million. He explained that they were able to obtain funding through the State SRF program; and get low-interest loans, instead of funding it through bonds, which equates to millions of dollars in cost savings on the financing.*

*Mahler said he was glad to see his favorite project, the wind energy at the Drop-off Station.*

**On a roll call, the vote was as follows with the Chair declaring the motion carried.**

**Yeas:** 8 - Evan Pratt, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Nays:** 0

**Absent:** 1 - Bonnie Bona

**10-c**    [12-0620](#)

Chalmers Place Parking Lot Rezoning and Site Plan for City Council Approval - A request to rezone this 0.92 acre vacant parcel, located at 2090 Chalmers Place, from R1B (Single-Family Residential) to P (Parking) and construct a 43-space parking lot for employees of Chalmers Place retail center and AATA park and ride users. Access to the lot will be provided through the existing Chalmers Place Shopping Center curb cut onto Chalmers Drive. Staff Recommendation: Denial

*Cheng presented the staff report.*

**PUBLIC HEARING:**

*Jeff Smith, 4389 Filbert, FEA INC, engineer for the petitioner, worked over the last year to come up with an approvable plan as a last ditch effort to build a parking lot to salvage the commercial center, which is in a desperate need. He reviewed the items which gave rise to staff's recommendation that the project be denied. He said the primary issue is the trees, noting that they have gone through the ordinance and looked at reasonable alternatives. He said they plan on taking out landmark trees and replacing them. He said he felt it was a misperception that the area is a*

high-quality woodlands, when in reality it is a residential lot with overgrown invasive species moving in and 30% of the site is compacted gravel. He said another issue is that the plan does not comply with the Master Plan. He gave justification for the rezoning, stressing that P - parking zoning is a less intensive use than residential. He said having a parking lot between the retail shopping center and the residential zoning is a natural, logical, transition. He said the parking is consistent with the surrounding land use in the area and their project is a very unique project with part of the parking being dedicated as an AATA park and ride lot. He said with the bus stop at the site, it creates a special situation, which would not be setting a precedent. He said the site has extreme topography, being set 18 feet below Chalmers Drive grade. He stated they will not be adding a curb cut, nor increasing traffic, and they will not be impacting the neighborhood with light or sound issues because the neighbors living behind Chalmers won't even be able to see that there is a parking lot there, with evergreens hiding the site.

Kevin Travers, 5000 E Grand River, Howell, said he is the property manager for Chalmers Place and has managed the site since it was constructed in 2006. He said they have struggled for 5 years to make the Center viable, and fill the spaces. There is 7200 square feet of the center that has not been used since it was constructed. He explained that they have showed the center a hundred times, but can not get past the parking issues. He said potential tenants look at the Center at all times of the day, adding that they, themselves have also collected their own data during peak times. He said the proposed project will cost \$250,000 to build, but is absolutely needed. He said they have been good citizens, paying their taxes and keeping the site clean and neat. He asked for careful consideration from the Commission as they ask for consideration to stabilize the tax base for the present as well as the future.

Matt Burke, 4081 White Birch, West Bloomfield Hills, Keystone Commercial, attests to the fact that he is the third broker who has worked on the project, and he has handled it for over a year. He said everyone they show the space to has concern about lack of available parking spaces. He said he could name two tenants they brought to the center that ended up going elsewhere.

Michael Roddy, owner of Paesano's, 3411 Washtenaw Ave, which is directly across from the Chalmers project site, said over the past 27 years they have seen Washtenaw Avenue change. Roddy said he remembers when the site was Arbor Dodge, with the berm separating them from the residential development behind. He said he has been before the Council and the Planning Commission representing his neighbors on Chalmers and he is here again. He said unlike the previous site plan, these petitioners have had several meetings with the neighbors and have listened to their input. He said he is also aware as a business owner the people that have taken down the Arbor Dodge dealership and constructed this wonderful development have increased the street value and the side street on Chalmers. They have put in sidewalks and a wonderful shopping center. He said they have done a lot to contain the water on the site and they have done everything a good neighbor should do, and he is very proud of what has been done. He said he also knows that as a business owner he doesn't need further empty lots or empty stores. He said he knows what the lot in question is like and he sees people parking in his lot and walking across Chalmers to go into the buildings there. Roddy said there are two businesses that consume and drive business there and they are completely filling their lot. He has asked people not to park in his lot, and in his discussions with his neighbors he believes the proposed parking lot will be sufficient and will beautify the area. He believes the petitioner will do everything the neighbors ask them to do, and he has asked the petitioners to listen again tonight and do whatever it takes to make this happen and he asked the Commission to please consider this request if the concerns are being met.

*Michael Homel, 3473 Wooddale Court, member of Woodcreek Homeowners Association and Board, commented on the staff report, noting that the main purpose for recommending denial of the proposed project was zoning; to keep commercial uses on Washtenaw Avenue and keep Chalmers residential. He spoke to the petitioner's rationale, stating that the development was completed in 2005-2006 and when it went in, the owner knew what available space there was and that hasn't changed. He said planning to use available space and balance the need is a better way to go than changing the zoning. He said the owner says the shopping center is struggling because there is a lack of parking, and he noted that as residents they can't prove or disprove that assertion, but he does know that all around in Arlington Square and in Arborland there are other retail centers that have vacancies and there are probably lots of reasons for them but it isn't our role to address. He said the petitioner has made previous unsuccessful attempts to rezone that lot to put multi-family houses on it. He said the citation of AATA and ten spaces would seem to disprove that parking is a critical need for employees and customers. He said that the petitioner claims that resident's concerns have been addressed, He said a neighborhood meeting was held on May 9, 2012 and additional overtures were made to neighbors in the area so he has not been remiss in his communications; however, the Woodcreek Neighborhood Association voted unanimously to oppose this rezoning request and don't find parking desirable in a residential area. He said their neighborhood group supports the staff findings as written in the staff report and he hopes that the Commission will deny their request and keep the zoning R1.*

*Amir Mortozawi, 1710 Woodcreek Blvd, voiced opposition to the plan and showed pictures of closed tenant spaces of nearby commercial spaces on Washtenaw Avenue. He said the builder who built the center had to build it according to the needs and plan accordingly, and it would be wrong for them to now try to circumvent the rules. He said they moved to Chalmers 10 years ago hoping they could walk to the nearby shops. He said this is what the City should promote, but he is no longer able to walk on Chalmers because drivers drive through at high speeds. They have called the police, and they have issued tickets. He said one of the tenants of Chalmers Place, Jimmy John's, has drivers that drive fast on Chalmers. He said, please don't make the bad situation worse by adding more parking, because the situation has been going downhill for 10 years since he moved there. He said more fast drivers will add more danger to Chalmers Drive.*

*Lois Kamoj, 2070 Chalmers, lives two doors down from the proposed parking lot and her daughter lives next door. She said they knew their neighboring lot was zoned residential so they didn't expect anything commercial to be built there. She said she doesn't believe the proposed screening will work. She said her daughter's house has a walkout basement and you would need a 50 foot tree to block the view. She said strangers will be looking at her grandchildren play or their bedroom windows which are on that side of the house. She expressed her concern for their safety. She said at a citizen participation meeting the owner had informed them that the parking would be for employees only and they would be very concerned with security, but then they offered their extra spaces to AATA. She said she walks past their existing parking lot and she has never seen their employee spaces in the back full. She said the Jimmy John's drivers do take up a lot of space in the main parking lot and they drive very quickly. She said they could park around the side and use their back door and park in the back, and have the front spaces as angled spaces. She said the Arbor Dodge people objected to the traffic and said it was such a difficult entrance to get in and out, and that was part of the reason they wanted to sell it. She said if they have another 43 cars entering and exiting, it will make it much worse.*

*Gwen Nystuen, 1016 Olivia, Malletts Creek Watershed Association, commended staff*

on their report and agrees with their findings. She said the rezoning doesn't meet the City's Mater Plan. She said the parcel is correctly zoned and would protect more natural features if it stays single-family zoned. She said they don't need additional traffic on Chalmers and for the sake of Mallett's Creek Watershed, she hoped the Commission would take the staff recommendation and deny the request.

Jane Heiniken, 1755 Brian Court in the Woodcreek subdivision, said the main issues are pedestrian crossing issues, noting that there are several competing left turns with the shopping centers and stores along Washtenaw Ave. She said she is a frequent AATA user and while she would applaud a park and ride lot in the area, she said it would only benefit the westbound traffic into Ann Arbor and it would be a problem for those returning eastbound, because they would have to cross the street to get to their cars. She said currently many employees at Collex try to dart across Washtenaw, and they are not willing to cross where there is a pedestrian crossing. She concluded that while they want to see the shopping centers viable, they have to look at the bigger picture of how people are getting in and out of the places.

Daniele Fassier, 2091 Chalmers Drive, said she opposes the extension of a parking lot because of more traffic, noise, and lights. She said the people that park in that lot are very loud and since her bedroom window overlooks that parking area she can hear everything. She said people drive very quickly down the street and she doesn't know why AATA would consider that area good for a park and ride, because it takes a very long time to turn out of Chalmers and onto Washtenaw. She said the developer should have thought about parking beforehand. She said with adding a parking lot, she is not sure how that would work with the steep drop. She said she has never seen the front parking lot full.

Madeline Gonzalez, 2091 Chalmers, supports recommendation to deny the petition based solely on issues of safety. She said the issues involve the speed of vehicles, and sometimes people leave disabled vehicles in the parking lot. She said another issue is that it is a residential area, and children play in this area, and they need to have the right to be safe. She said it isn't safe because of lack of sidewalks and now bringing a new element; AATA users. She said she feels that they weren't told the whole truth at the neighborhood meeting, because now they have added the AATA, which is all about dollars and cents and for her it is about a livelihood and the ability for her and her family to live in peace in a residential neighborhood. She asked the Commission to deny the applicant's petition. She said Michael Roddy from Paesanos wants this request to be approved so they can use it for their overflow parking. She added that they want to support the local shops but not at the expense of their safety.

Jan Ulrich, 3544 Oakwood Street, stated that the Chalmers Street Intersection is a very dangerous intersection. She said if you look at Washtenaw Avenue to Carpenter, it's a mess. She said she is wondering how the development got approved in the first place. She supports comments that advance planning was not adequate. Her primary concern is safety, noting that there are already so many entrances and exits on Washtenaw and adding more traffic will not be helpful to this dangerous stretch of road. She said there is plenty of parking on the south side of the building and it doesn't make sense to add impervious draining to Malletts Creek. She said it is important to look at the quality of life for neighbors on Chalmers. She referenced the citizen participation meeting notes, and had concerns that the petitioner was deceitful about the AATA park and ride lot.

Steve Sharpman, manager of the Verizon store in Chalmers Place, said he can attest to parking issues, since he can see the entire parking lot from his store window. He said many times between 10 am and 2 pm there are less spaces available than shown on the table. He said customers will not stop when they see the lot is full. He



said if Chalmers Place is currently at 50% occupancy, adding 4 more units will decrease parking further and will not be a sustainable marketplace. He said they need to look at the types of businesses in the center; i.e. hair salon, nail salon and a cell phone store. He said shopping for a cell phone takes time and you do need to park for a longer time. He said he strongly encourages the Commission to change the zoning to allow for additional parking

Dedrize Maask, manager of Luvs hair and Nail Salon in Chalmers Place, said they probably use up a good deal of the parking with 15 - 20 employees, and they have 16 pedicure chairs and 6 tables, with appointments that can take 2 hours. She said she, too, sees the parking lot all day and she watches cars having to wait for other cars to leave before they can find a place to park. She said they would like for the center to fill up with other tenants that would then also increase their business. She said they are losing clients because of the lack of parking and she requested the Commission to approve the request.

Jim Sweeten stated he doesn't live in the area but has family who does. He said the contentious matter seems to be where the employees park and while he is very much in favor of a park and ride lot, he wouldn't want to see one on that particular lot. He said if there was any way to get the employees to park elsewhere and take the AATA bus in to work, it would save a lot of money, grief and the property.

Laura Schultz, 1710 Woodcreek Blvd, showed a photo of the parking lot and stated that the photo showed that it wasn't full at noon today.

Len Nadolski, principal of the property, LPN Properties, said the design of the parking recognizes the water run-off and the secondary stage of the water retention area that goes into Malletts Creek. He said they put a lot of valuable time into the design to be able to respect the watershed and be able not to pollute it or degrade it in any shape or form. He said staff has worked very hard with them on that issue. He said this property is such a unique parcel in that it sits so much lower than the rest of the surface that you will hardly even know there will be a vehicle in there. He said they did planning depth videos to how it would affect the neighborhood so they are very conscious of that matter. He said the occupancy of this shopping center is at a detrimental financial position right now because they cannot get the tenants to come in because of the parking. He said they are in a financial situation with their lending institution that they are not meeting their ratios at all, however, they are willing to do the additional investment. He said they wouldn't invest \$ 250,000 if they didn't need additional parking. He explained the accommodations and improvements they have made to the site and area since they moved in, He said they intend to add a landscape buffer and a fence and security cameras vs. an empty lot with a bunch of trees where people could hide in. He said they will put signs up in the parking lot that it is intended for employees only and they will have unauthorized vehicles towed. He said they are at a crossroad right now where they find themselves in a very desirable location but the parking is inadequate. He stated that they have never previously requested this parcel be rezoned for multi-family, but it could've been a prior owner. He said every plan has its exception and he would ask that the Commission take that with this piece of property.

Marsha Brocheres, 2093 Chalmers Drive, said her biggest concern is the proposed park and ride lot at the site and she can't imagine all the busses coming up and down Chalmers Drive with their families being there.

**Moved by Westphal, seconded by Pratt, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Chalmers Place Employee Parking Lot (2090 Chalmers Drive) rezoning from R1B (Single-Family Dwelling District) to P (Parking District), and**

The Ann Arbor City Planning Commission hereby authorizes disturbance of the 25-foot natural features open space per Chapter 55 (Zoning Ordinance), Section 5:51(5) and (6), and

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Chalmers Place Employee Parking Lot Site Plan, subject to approval by the Washtenaw County Water Resources Commissioner prior to City Council review and subject to City Council approval of the requested rezoning to P (Parking District).

*COMMISSION DISCUSSION:*

*Briggs said she feels for the petitioner in this situation, since she senses there are real issues with a lack of parking and being able to bring in new tenants; however she also agrees with the staff report in that the rezoning is not in line with the City's Master Plan and is not in the best interest of the neighbors. She said that she felt the developer was not looking at the best interest of the neighborhood for the long term. She said parking is an issue for several businesses along the Washtenaw corridor and the businesses need to come together to find strategies and solutions. Briggs said building a parking lot for the employees is not a solution, when there are other transportation issues available to bring in those employees. She said AATA has knowledgeable people that can assist developers and tenants, and they have bus passes available. She added that she didn't feel that a parking lot was the solution to the issue in this situation and she couldn't support it.*

*Westphal asked if the parcel, as is, is developable as currently zoned.*

*Cheng said, yes, it is zoned R1B, and because of the lot size, it could be split twice for two single-family dwellings. He said staff believes a single-family dwelling would create less of a disturbance to the natural features, even R1B is exempt from natural features regulations, and they would be allowed to take down those natural features.*

*Westphal asked staff if they considered this a hardship, in not being able to develop and use the property to its zoned use.*

*Cheng clarified that if rezoned, the parcel could only be used for surface parking and no building could be built there.*

*Westphal said it seems that this is a case where the residential neighbors have a fair expectation that the lot will remain as zoned because it is a buffer, adding that this is why we have zoning laws. He said there seems to be ample parking available across the street and that could be an option for the tenants. Westphal said to offer this zoning exemption does not serve the surrounding residents or the Master Plan very well.*

*Woods agreed with the Commissioner's comments, and said the lack of parking doesn't warrant a zoning change, when there are other options available to the developer. She said she wanted to speak for the trees as well, and just because they weren't native doesn't mean they need to be taken out; they need to be respected.*

*Derezinski agreed that it is a tough situation and maybe there was a mistake in calculations for the parking needs when the center was constructed. He said he gives a lot of weight to the staff report in terms of reason and rationale presented and he defers to staff's recommendation for denial on this project and hopes that there is an alternative somewhere else for parking. He said employees could park across the street where there seems to be plenty of parking or AATA could shuttle employees.*

*He explained that the Washtenaw Ave corridor will become a lot more walkable once the improvements are complete.*

*Giannola agrees with previous Commission comments and asked the petitioner if they have verified if there are a lot of commuters parking in their lot.*

*Travers said he is at the site 2-3 days a week and he hasn't noticed this being a problem.*

*Giannola asked staff if there are other areas on the site that might be available to use as parking.*

*Cheng said he has met with the petitioner on site, noting there are a couple of options that they could do; restriping the parking lot to smaller parking spaces [up to 35%] and since the City has revised the C3 setbacks, they could reduce the setbacks along Chalmers and probably add an additional 10 parking spaces or so. He said he wasn't sure if that would meet their needs.*

*Briggs mentioned that the neighborhood has brought up the issue of traffic concerns and she believes that Washtenaw Ave is really not a place you will feel comfortable when on foot or bicycle and it wouldn't be appropriate for the tenants to be telling their staff to park across the street and have to cross Washtenaw Ave because it isn't safe. She expressed the need for the City to work rapidly on the Washtenaw Ave corridor improvements. She said if this developer is willing to put in \$ 250,000 for parking improvements, then how many other business owners along the corridor would also be willing to add to those improvements, along with MDOT being willing to put in hawk signals and pedestrian crossings it would become a much more pedestrian accessible area which would allow utilization of other freed up parking spaces along the corridor. She said adding that instead of leaving it totally up to the developer, maybe there were ways we could collaborate on finding solutions to the problem.*

*Mahler said he believed it came down to a matter of spot zoning and what the Master Plan calls for, adding that the Commission has been consistent that they are against spot zoning in violation of the Master Plan and they do not consider financial data or forecast when deciding zoning issues. He commented, that in light of that, looking at where this property is located, on a busy thoroughfare, he can't image that the parking issue would not be a problem for future tenants in that spot. He said he feels that if there were other parking options for this site, they would have been discovered by now. He said his personal feeling is that he doesn't see any way out for the petitioner, and while the request is against the Commission's stand on spot zoning and the Master Plan, he supports the request.*

*Mahler suggested that each motion be considered separately.*

**Moved by Westphal, seconded by Pratt, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Chalmers Place Employee Parking Lot (2090 Chalmers Drive) rezoning from R1B (Single-Family Dwelling District) to P (Parking District). On a roll call, the vote was as follows with the Chair declaring the motion defeated.**

**Yeas:** 1 - Eric A. Mahler

**Nays:** 7 - Evan Pratt, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Absent:** 1 - Bonnie Bona

**Moved by Westphal, seconded by Pratt, that the Ann Arbor Planning Commission hereby authorizes disturbance of the 25-foot natural features open space per Chapter 55 (Zoning Ordinance), Section 5:51(5) and (6). On a roll call, the vote was as follows with the Chair declaring the motion defeated.**

**Yeas:** 1 - Eric A. Mahler

**Nays:** 7 - Evan Pratt, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Absent:** 1 - Bonnie Bona

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**Yeas:** 1 - Eric A. Mahler

**Nays:** 7 - Evan Pratt, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

**Absent:** 1 - Bonnie Bona

**10-d**     [12-0621](#)

Amendments to Chapter 55 (Zoning Ordinance), Section 5:501.(4) - A proposal to amend the Zoning Ordinance regulations concerning medical marijuana dispensary and cultivation facilities to remove the requirement that these facilities be operated in compliance with the Michigan Medical Marijuana Act. Staff Recommendation: Denial  
*Rampson provided the staff report.*

**PUBLIC HEARING:**

*Dennis Hayes, 120 N. Fourth Ave, noted that he has submitted a letter on behalf of the Michigan Medical Marijuana Guild representing existing dispensaries in town. He asked that the Commission adopt the proposed amendments. He said that the Court of Appeal's decision was very narrow and dealt with transactions between patients. He said that the State Court of Appeal's opinion has just been granted leave for the Supreme Court, so it is currently up in air. He said he felt that in regards to zoning issues, this section is a case of the tail wagging the dog. Hayes noted there have been nine dispensary licenses recommended for licensing. He explained that as part of that application they had to get zoning compliance permits from the City, indicating that their locations complied with the zoning ordinance. and that this has been done. He asked, what is the City's curiosity in its desire to interpret its zoning ordinance in requiring its compliance with the MMMA. He said it is inappropriate and unnecessary as a zoning matter. He said the people who have applied for licenses are already zoning compliant and these same applicants have issued business models which they believe comply with the State law and which they believe are distinguishable from the Court of Appeals opinion. He asked that the Commission reject the staff recommendation.*

**Moved by Briggs, seconded by Westphal, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the proposed amendments to Chapter 55 (Zoning) Section 5:50.1(4)(k) regarding requirements for medical marijuana dispensary and cultivation facilities.**

**COMMISSION DISCUSSION:**

*Giannola said that if the request was to add this clause, then she would say that it does not need to be added, because it is implied that the City will follow the MMMA and follow the law. In this case, she noted, the licensing board wants it taken out so people can say, it isn't there and therefore we don't have to follow the act. She said this was concerning to her. She said it is difficult to discuss the zoning aspect of the issue with all the politics involved. She said she believes from a zoning standpoint the clause needs to be in the ordinance. She said, from a political standpoint, should the City be taking this clause out of the ordinance in order to force City staff to do something that is currently against state law. She added that the issue is so political, that it should not be before the Commission. She said she can't support the request.*

*Derezinski said that City Council considered three options for this amendment after a year of hard discussion. One was to waive the ordinance by resolution of Council, which was voted down. The second one was similar, and the third was this option, currently before the Commission. He said he had similar concerns as Giannola and asked if this is the proper procedural way to refer an issue in order for the proponents to the ordinance to get what they wanted. He said the message of what was intended with the recommendation of the City Planning Commission was pretty clear, and he didn't feel that putting the burden on Planning Commission was the proper use of the Planning Commission. He said he couldn't vote in support of the request.*

*Woods agreed with the other speakers and said she was voting to recommended denial of the request.*

*Adenekan agreed with the other speakers and was voting to recommend denial of the request.*

*Pratt said that common sense would say that they have to comply with state law and leaving it clearly stated in the zoning ordinance is the safest course. He did not see a problem with keeping the clause in the ordinance.*

*Westphal said that he agrees with Commission comments and the staff report in that removing the clause would make staff's job more difficult with enforcement.*

*Briggs agreed that there was no need to remove the clause because it implied that the City will follow the MMMA which is law. She felt the issue being raised about providing zoning compliance permits needs to be addressed, since it might be that through the process permits might be denied unnecessarily.*

*Mahler said that he feels extremely uncomfortable, adding that the licensing board, as well as City Council, has no authority to allow an illegal use through a zoning ordinance by eliminating reference to the State statute. He noted that there is a legal axiom that says the inclusion of something means the exclusion of something else. He said that the removal of the clause would be authorizing illegal uses which would have pretty severe consequences for the City in terms of litigation and Attorney General enforcement. He said he would not want anyone of the Planning Commission or City Council to have to go before the Attorney General to explain why they took out the clause from the ordinance. He said he would be voting against the request.*

*Rampson clarified that Zoning Compliance permits for the dispensaries, as referred to by Dennis Hayes, have not been issued. She explained that they are in a holding pattern as staff works through issues.*

**On a roll call, the vote was as follows with the Chair declaring the motion**

defeated.

Yeas: 0

Nays: 8 - Evan Pratt, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

Absent: 1 - Bonnie Bona

11 **AUDIENCE PARTICIPATION (Persons may speak for three minutes on any item.)**

12 **COMMISSION PROPOSED BUSINESS**

13 **ADJOURNMENT**

*Adjourned at 10: 45 pm.*

**Eric Mahler, Chair**  
**mg**

Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, [www.a2gov.org/ctn](http://www.a2gov.org/ctn), on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).

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- Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.

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