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Sent: Thursday, January 31, 2013 11:19 AM

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Subject: Need for rezoning

Dear Mayor Hieftje, Members of City Council, Members of the Planning Commission, Planning Department Staff, and Members of the Downtown Design Review Board:

Speaking as acting chair of the Downtown Design Guidelines Neighborhood Review Committee, an independent group representing the eight downtown and near-downtown associations, we solicit the city to take steps to rezone some key downtown sites.

When the A2D2 zoning, design guidelines, and design guidelines process was approved over two years ago, city council agreed that they would be reviewed after a year to make necessary changes and improvements. Such a review will indicate that most of the downtown district is surrounded by areas designated as D2, allowing for a transition from the height and massing of high-density downtown land use to lower-scale residential areas. Such transition areas are clearly called for in the city's Downtown Plan, the Central Area Plan, our historic district ordinances, the Downtown Design Guidelines, and most recently the DDA's recommendations in its "Connecting William Street" document. (See attachment.) However, some downtown edges that abut two-story residential areas are designated as the more intense D1 zoning, most notably along Huron Street (See attached map.)

The current proposal for a large development project at 401-413 East Huron Street has made the community aware that some parcels of land in the downtown have a zoning category that is not consistent with the city's master plan, downtown plans, and design guidelines. Those parcels include not only sites west and east of Sloan Plaza, but also properties zoned D1 that front on the south side of East Ann Street from North Division Street to North Fourth Avenue, extending one half block south toward Huron Street.

The city should initiate action to bring these parcels into legal conformance. The urgency for this action is evident because of the 401-413 East Huron Street proposal, currently under D1 zoning, that is completely out of scale for its location and provides no transition in scale, massing, or design to its abutting historically designated residential neighborhoods.

An action taken by the city to change zoning of these parcels to D2 is clearly within the authority of the city, since current owners of these parcels have as yet no "vested rights" in their development. This is described in Section 10.7 of the book, Michigan Zoning, Planning, and Land Use, "*But landowners do not have a vested interest in the current zoning classification of their land or their neighbors' land that will remain unchanged.*"(1) *A Michigan landowner does not acquire a vested right to a particular land use until it has made substantial physical improvements to the land pursuant to a validly issued building permit.*"(2) This does not include demolition of existing structures on the site. It continues, "*Monies spent preparing to construct will not suffice to create a vested right in the current zoning classification. . . The substantial improvements also must be made under authority of a building permit in order for the landowner to acquire a vested interest in the current zoning.*"(3) As this section of the book states, "*The fact that the property owner's application motivated the change is not, in itself, dispositive of the question.*" Generally, courts have held in these types of cases that the wishes of the city are the predominant factor in determining whether rezoning is legally acceptable.

The parcels in question clearly are zoned in a category not in conformance with the city's planning documents. The city should not give site plan approval for any developments on these parcels until zoning is consistent with planning documents.

As an interest group working to protect the character of the city's near-downtown neighborhoods, we are not opposed to development on these parcels, but we express strong opposition to any large-scale development that is completely out of scale with its residential neighbors. We support planning commission and city council action to fix the code where these errors in zoning have occurred.

Christine Brummer	Ilene Tyler	Peter Nagourney
Christine Crockett	Betsy Price	Ellen Ramsburgh
Norman Tyler	Ann Schriber	Susan Wineberg
Eppie Potts	Ray Detter	Hugh Sonk
Tom Whitaker	Alice Ralph	

Items from city documents regarding transition areas:

From page 29 of the 2009 Downtown Plan: *"Interface Area Goal: Preserve and enhance incremental transitions in land use, density, building scale and height in the Interface areas located between downtown's neighborhood edges and Core Areas [See figure 9]. Development within the DDA district, especially in the area which forms the Interface between the intensively developed Core and near-downtown neighborhoods, should reinforce the stability of these residential areas -- but without unduly limiting the potential for downtown's overall growth and continued economic vitality. Ideally, development within this portion of the DDA district should blend smoothly into the neighborhoods at one edge and into the Core at the other. Recommended Action Strategies (1) Replace the existing zoning designations that make up the Interface areas (C2B, C2B/R, C3 and M1) with a new Downtown Interface zoning district. (2) Reduce maximum permitted FAR's of 600% and maintain height limits in the Interface zone, giving special consideration to adjoining residential neighborhoods. (3) Revise existing premiums, and provide premiums where not currently available, to create incentives for achieving Interface objectives: residential development, affordable housing, "green building" and transfer of development rights. (4) Incorporate recommended land use and urban design objectives as overlay zoning districts for the review and approval of projects in the Interface area...."*

The city's 2009 Downtown Plan includes a section on Development Character and "Sensitivity to Context" (page 33). The Plan establishes the following as a goal: *"Encourage design approaches which minimize the extent to which high-rise buildings create negative impacts in terms of scale, shading, and blocking views."*

The city's Central Area Plan recognizes potential conflicts in areas where the downtown commercial core meets low-scale downtown residential areas. The Central Area Plan states, *"In various locations, houses are overshadowed by larger commercial, residential or institutional buildings that are out of scale with existing surrounding development. In addition to being aesthetically displeasing, out-of-scale construction alters the quality of living conditions in adjacent structures. Often it is not so much the use that impacts negatively on the neighborhoods, but the massing of the new buildings."* Objective 5 of the plan's Historic Preservation Goal states: *"Where new buildings are desirable, the character of historic buildings, neighborhoods and streetscapes should be respectfully considered so that new buildings will complement the historic, architectural and environmental character of the neighborhood."* These documents reference

significant problems that can result from an inappropriate interface between large-scale downtown projects and low-scale adjacent residential areas.

The Downtown Design Guidelines, Section B.1.1, states: "*Design a building to minimize its impact on adjacent lower-scale areas.*" Section B.1.2 continues: "*When a new building will be larger than surrounding structures, visually divide it into smaller building modules that provide a sense of scale: a) Vary the height of individual building modules: b) Vary the height of cornice lines.*" The Design Guidelines also recommends (Section A.2.2) "*Site designs should accommodate solar access and minimize shading of adjacent properties and neighborhoods.*"

Based on the city's adopted Downtown Design Guidelines, the DDA's "Connecting William Street" draft recommendations on "Density and Massing" for future building on city-owned downtown lots makes clear "*that surrounding context should be considered and buildings designed to step back from lower-scale neighbors.*" It also advocates the strengthening of the downtown design guidelines process.

Endnotes:

(1) *Lamb v Monroe*, 358 Mich 136, 147, 99 NW2d 566 (1959); *Livonia v Department of Social Servs*, 123 Mich App 1, 20-21, 333 NW2d 151 (1983), aff'd, 423 Mich 466, 378 NW2d 402 (1985); *Baker v Algonac*, 39 Mich App 526, 535, 198 NW2d 13 (1972).

(2) *Dingeman Adver, Inc v Algoma Township*, 393 Mich 89, 223 NW2d 689 (1974); *Lansing v Dawley*, 247 Mich 394, 225 NW 500 (1929); *Dorman v Township of Clinton*, 269 Mich App 638, 649, 714 NW2d 350 (2006).

(3) *Accord, Bevan v Brandon Township*, 438 Mich 385, 475 NW2d 37 (1991); *Gackler Land Co v Yankee Springs Township*, 427 Mich 562, 572-574, 398 NW2d 393 (1986); *Franchise Realty Interstate Corp v Detroit*, 368 Mich 276, 118 NW2d 258 (1962); *Bloomfield v Beardslee*, 349 Mich 296, 84 NW2d 537 (1957).

