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**Sent:** Monday, September 07, 2015 8:22 PM

**To:** Planning

**Cc:** Ken Timmer; Judy Hanway; Pat Marten; Kate; Bill Higgins; Frank Burdick; Prasad; Ruth Dixon; Jeff West; Carolyn Manz; Malini Raghavan; Bob Parnes; Susan Torrible; Ruth Gonzalez; Greg Hebert; Aram Kalousdian; Randy & Ronnalee Kent; Ed Stuenkel; Steve Kennel; Chuck Wilkins; William A. Pollard; Michael Williams; Steve Horler; Diane F. Reynolds; Eric Macks; John Neal; Charles Cowley; Michael Manz

**Subject:** 2250 Ann Arbor Saline Road

Dear Members of the Planning Commission and Planning Commission Staff:

## **Introduction**

I am a resident of Ann Arbor and live, with my family, at 2099 Ascot Rd. I am writing to oppose the proposed project at 2250 Ann Arbor Saline Road.

For many months, residents of the Lansdowne neighborhood have pleaded their case to the Planning Commission about the unfair burden the Commission apparently and irresponsibly intends to impose on their established neighborhood--on their home values, on their quality of life, on the safety of their children and the rustic and secluded natural environment in which Lansdowne is located.

There was until recently a belief among residents of Ascot Rd. that the 2250 Project might be acceptable with certain accommodations, particularly the elimination of the so-called "emergency access" at Lambeth. None of the Planning Commission, the Staff, or the developer have shown the slightest inclination to make a change in the site plan for this Project. That belief in accommodation through negotiation is now gone. Residents here, in the face of the indifference to their expressed grievances, have put the Project under increased scrutiny and they have found more and more to dislike about it. It is now viewed as unneeded and unwanted in its entirety. Residents, in particular, felt their intelligence and dignity as homeowners insulted by the proposal (now actually on paper) of an access road proposed to masquerade as a sidewalk. It is not a solution to a problem to conceal the nature of a thing by calling it by another name, or by dressing it up as something that it is not.

Awareness of the threat from this ill-conceived project is growing. There are now concerns being expressed, not only by Lansdowne owners on the east side of South Seventh, but on the west side as well, where residents are becoming aware that, for example, Delaware will be an easy route from Ann Arbor Saline Road to West Stadium, without traffic lights, via Greenview or Mershon. Village Oaks residents have written to me to say they are angry and concerned about the size of the project and the minimal setbacks somehow achieved next to that community by "offsets." The parallels to the experience with 413 East Huron are in fact striking: a project which no one in the neighborhood wanted except for the developer and a City government strapped for sources of revenue other than from new buildings.

What nearly all the residents I have spoken to believe is that the City understands the possibility--if not the likelihood--that, once the City establishes a beachhead in the form of a "gated access" at Lambeth, the next step, not far behind, will be action to make the access road public and permanent. Planning Commission staff have readily responded to residents' questions about this issue by stating that, if proposed by the residents of the new condominium and with City Council approval, nothing would prevent this from happening.

It is also notable, that notwithstanding the vocal protests of residents, the Planning Commission appears ready, in approving the site plan, to rely on the improbable lobbying for the Project by the City's Fire Department. Despite codes that do not require a secondary access, and vigorous opposition from taxpayers, the Fire Marshall has appeared several times at Planning Commission sessions and the Fire Chief, I understand, has more or less contradicted the Fire Marshall and taken the unusual position that it would, **as a matter of convenience**, be desirable to have this extra access through an established neighborhood.

I have now met with a group of eleven respected members of the Lansdowne community in order to gauge the consensus about the community's posture toward the 2250 Ann Arbor-Saline Road project and will be meeting with others. I have also spoken individually with other neighbors on Ascot Road and on Delaware and Chaucer about the likely impact of the project. I don't claim to speak for more than the people with whom I have spoken, but the consensus thus far (with others joining) appears to be twofold.

On the one hand, residents believe that participation in the Planning Commission process and the expression of citizen views is important, notwithstanding the fact that those views have been studiously ignored thus far. Many will appear at the Planning Commission Meeting on September 9, 2015 and speak; many others have emailed their thoughts.

On the other hand, however, there is general agreement that, in the absence of litigation, and the normal discovery that entails, they will not be heard, or listened to, or given answers to their questions concerning why this Project is located where it is and configured as it is. This is the City's own fault. The City has demonstrated repeatedly (as in the cases of 413 East Huron and the recent Deer Management Study) that, absent a lawsuit, the City will hem and haw and ultimately refuse to act in response to residents' well-founded and often unanimous concerns, no matter how eloquently or loudly expressed.

This has bred a feeling of frustration and helplessness among many neighbors here. The residents with whom I have spoken believe (and I agree) that minds are already made up. As a result, a suit against the developer is now firmly contemplated and action toward that end has already been taken. For example, a valuation expert specializing in just compensation cases—whom I consider the best in the state—has already been

retained and willing plaintiffs have been identified. In any event, it only takes one plaintiff to start a lawsuit.

This is a position that was not arrive at lightly, but rather on the basis of several issues at play, some legal and some going to the basic credibility of the City and its Commissions and Boards.

## **Legal Issues**

Blight by Announcement. As to legal issues, the first is that the City and the developer have already, in all likelihood, damaged property values in the vicinity of the proposed access road merely by talking about it incessantly for two years. If the City and a developer, working jointly, make it known loudly and prominently that a quiet street like Ascot Road, with little traffic, will be opened to traffic through Lansdowne (over vociferous objections by property owners) via an access road from an adjacent condominium. The access road will be a magnet for other potential development, which many residents believe the City will promote in order to raise revenue. The City should not be surprised, under such circumstances, by a claim of "blight by announcement" from the affected homeowners.

The access road has, in fact, been the subject of newspaper coverage and commentary in its favor by public officials. Such coverage is often promoted by the City itself. There is little doubt that damage to property values here has already occurred and will continue as the developer ramps up its marketing in anticipation of putting a shovel in the ground. In fact, I understand that the proposed access road is being touted by the developer's representative as a "selling point" for potential buyers.

Vested Property Rights. The second legal issue is posed by the simple fact that every homeowner in Lansdowne in the vicinity of the proposed access road made an in investment-backed decision to purchase their properties on the basis of an existing plat for a subdivision without any access from Ann Arbor-Saline Road. I would never have bought this house if there had been such an access, and if I had bought the house, I would have expected to pay less for it. In a robust Ann Arbor real estate market, I now expect the value of my home to fall.

Michigan, fortunately, is a state with a strong tradition of protection of private property rights. Investment-backed decisions based on facts of legal significance created by a municipal body (such as the approval of a subdivision plat by the Ann Arbor Planning Commission) give rise to "vested property rights" that are zealously protected by law. The actions of the developer and the City are a plain and brazen threat of direct interference with, and a "taking" of vested property rights up and down streets in Lansdowne, without a suggestion that such rights exist or might require compensation when they are taken away. That is apparently what this Project is proposed to do, with the apparent encouragement of the City. The City, in fact, has over the years now established a record of taking property rights without paying for them.

In that regard, there is also a growing view of the project as more of a public theme park for the use of others than a private condominium project, with publicly funded construction on private property and an unnecessary access road that is unacceptable on any terms. If a secondary access is that important, then perhaps it is best if the Project be relocated or abandoned.

Required Footing Drain Disconnections. Third, the development requires footing drain disconnections in lieu of requiring the project to mitigate its sanitary sewer impacts on-site. The Planning Commission lacks ANY authority for approving footing drain disconnections as part of any project. Powerful evidence that the Commission lacks such authority—that it has NEVER had such authority, as it approved one FDD-dependent project after another—emerged on August 17, 2015, when I obtained a video that was previously concealed by the City (throughout a public debate now in its fourth year) from residents opposed to or concerned about FDDs . The City, it appears, is willing to suppress documents in order to promote development and win arguments.

The video includes a three-hour presentation to a Working/Special Session of the City Council (at which a quorum was present) on July 9, 2001 by senior City staff, the City Attorney's Office, and an FDDP contractor. This was less than four weeks before the first reading of the FDD Ordinance by the City Council, members of which are seen on the video. What is painfully clear from the City Attorney's Office presentation to the Council is that the very houses in which all or nearly all FDDs have been performed—houses permitted before October 15, 1973—were to be EXCLUDED from the FDDP. The relevant portion of the City Attorney's Office presentation can be found at about 37:00 on the video at the following link, in MPG format:

<https://www.dropbox.com/s/1z3g1eiafdaf12c/010709%20Council%20Working%20Session.mpg?dl=0>

Last week, the City Attorney's Office received a detailed letter about this video and the consequences of its concealment, precisely in those terms. The City Attorney's Office proposes to respond to that letter by September 11. Whatever the response, however, the Planning Commission however cannot claim ignorance of the video and what it says in plain English. It is a document in the City's video archives and, legally, the City and its Planning Commission are charged with knowledge about its existence and contents. In this case, the contents disclose what should have been understood as strict limits on the authority of the Planning Commission—one of two bodies that approve requirements for footing drain disconnections—to act on this or any other FDD-dependent site plan by requiring FDDs in such homes. The statements of the City Attorney's Office representative on the video contradict any authority by the Commission to have acted on ANY of the site plans that have required hundreds and hundreds of mandatory FDDs in pre-October 15, 1973 homes whose owners the City Council was told in no uncertain terms would be left alone.

Houses of the same vintage have existing curb drains drilled in their lawn extensions, to which the homes will be connected in order for this unwanted project to obtain its

Certificate of Occupancy. There is a startling contrast between the City's tired narrative of a "voluntary" FDDP and former-Mayor John Hieftje's question near the end of the FDDP presentation on the Special Session video, as follows:

What are we going to do about the property owner who is very reluctant to take part in this [FDD] program, who doesn't want anything to do with it, who thinks we are the sewer Nazis, who doesn't want people working in their house?

If this project is approved, what the City will "do," under the standard language in City development agreements, is to require the developer **itself** to participate with the City and several contractors affiliated with the City in furtherance of a plan to induce 21 unsuspecting homeowners to disconnect their footing drains "voluntarily" so that the project can obtain a Certificate of Occupancy.

Why are those homeowners less important than the 2250 development? Does the Planning Commission propose to require that the developer, the City and the City's contractors disclose to these homeowners (whatever the vintage of their homes) the radon risk and need for radon mitigation after FDD construction, a risk that was plainly and clearly acknowledged on this concealed video by the then-Water Utilities Director and in documents leading up to the Special Session? In fact, it is City's policy--recently reaffirmed-- **not** to provide any such warning. Will the developer be required to warn the owners of those very 21 homes that (as is well known to the City and its contractors) the curb drains to which their new "free" system will be connected now have a documented history of freezing in late winter, and that they have caused severe flooding, foundation damage, and toxic mold growth? Will they be warned that the City will deny any responsibility for such effects?

These are facts and if any owner were given these warnings at the Planning Commission's behest, they would be the first in over 14 years of the FDDP. The plain import of the City Attorney's Office statements on the video concealed by the City is that the Planning Commission's actions as to pre-October 1973 homes (at the least) have been entirely outside the law for over a decade. During that entire period, the Planning Commission has been legally charged with the knowledge of the City's own records and the City's own words denying that the Commission EVER had such authority but which it has purported to exercise over and over again, without consequences.

What are residents of Lansdowne to think, many of whom are those who were to be left in peace by the City's FDD Program? What I see is that the legal rights—and simple dignity—of Lansdowne residents are being threatened again by the precipitous actions of the same Planning Commission that approved the plat for their subdivision and has not hesitated, for over a decade, to batter this community with FDDs in hundreds and hundreds of homes whom the Mayor and the then-City Council Members were told in 2001 were to be left strictly alone.

### **The City's Loss of Credibility**

Finally, I think there is good reason to view with deep skepticism any of the actions and statements of City boards and bodies relating to capital projects, particularly in the realm of so-called “public engagement.” I wish more people were aware of the video clip at the link below, unabashedly displaying to the City and the nation the City’s self-inflicted wound to its own credibility:

<https://vimeo.com/118677465>

The video at the link is of a meeting of City staffers just last fall to discuss the orders to staff from the City Administrator, Steven Powers, to study and adopt a new style of public engagement and organizational decision making called “Unrational Leadership.”™ “Unrational Leadership” is based on “The Search for Unrational Leadership™: How to Change Your Life Using Rational and Irrational Thinking” (2005) by a City contractor specializing in “public engagement.” According to one of the presenters, the orders from Mr. Powers to all department heads and senior staff were “to read the book and implement it in your capital projects.” Why is the type of “leadership” endorsed by Mr. Powers called “Unrational”? One of many similar statements in the referenced book provides the answer:

The primary difference between Unrational Leadership™ and current management thinking is that Unrational Leadership™ **accepts irrational methods as routine practice without sacrificing reason.** [Emphasis in original.] Rationality is used throughout the process **to assimilate and interpret irrational data: dreams, fantasies, fairytales, symbols, and feelings.** Unrational Leadership™ **releases Mr. and Mrs. Irrational,** those wild and unpredictable twins from the basement closet that they have been forced to occupy since the dawn of the Age of Reason. ... The Unrational leader doesn’t pretend that he is or should be or can become Mr. Spock of Star Trek fame. He carefully **unconsciously uses his God-given ability to see around corners** and uses the information to make better decisions.

What essential methods do “Mr. and Mrs. Irrational,” with the endorsement of the City Administrator, add to help the City in making “better decisions”? According to the book that all staff were ordered to read and “implement,” the answer is that “[t]hese methods are based on the general principle of **interpreting your dreams, visualizing the future, following your gut, listening to your heart, going with the flow, and praying.**” These methods, in a book that makes a serious comparison between Lincoln and Hitler and instructs readers in the use of something called “the Art of Betrayal,” are stated to be “positive irrational methods.”

How many Planning Commission Members or staffers were required to read this book and how is it being “implemented” in their “projects”? How is it being “implemented” in the 2250 project? Why should neighbors not look at this project as an exercise in the “Art of Betrayal” seriously hyped by the City administration as a model for dealing with the public? There is no reason for me and my family not to take at face value the City’s own words and intentions, stated to have been expressed directly to certain City staffers by the City Administrator for repetition to other City staff? Why should we doubt that “Mr.

and Mrs. Irrational” have joined the City’s leadership team as the practitioners of the art of “seeing around corners to arrive at conclusions that cannot be factually proven.” As the video makes clear, skeptical City employees, on the taxpayers’ dime, actually were required to attend seminars and complete homework assignments for purposes of in-depth training in such hokum.

I think I can safely speak for others when I say that I don’t want decisions by the Planning Commission about my neighborhood and its future to be decided by a team that includes the officially-appointed “Mr. and Mrs. Irrational.” I emphatically reject any process by a government body that presumes to decide the rights of others which includes “assimilate[ing] and interpret[ing] irrational data,” such as the aforementioned “dreams, fantasies, fairytales [sic], symbols, and feelings.” I reject any process by the City, purportedly about real property rights, that is grounded in “visualizing the future, following your gut, listening to your heart, going with the flow, and praying.” “Unrational Leadership,” in fact, provides the Planning Commission with concrete tools for such “better” decision-making processes. A useful example is the attached Mandala (defined by Webster’s as “a circle enclosing a square with a deity on each side that is used chiefly as an aid to meditation”) that was actually used by the City of Kalamazoo to make decisions about storm water management, all as described in detail in “The Search for Unrational Leadership.”

As challenging as litigation can be, it has the virtue of being conducted in the sunshine, with discovery, and is the only rational alternative I can see to submitting to the results of officially-encouraged “irrational thinking” and promoted by the concealment of the City’s actions from the public eye.

Respectfully,

Irvin A. Mermelstein



The Light Before the Dawn