

May 11, 2016

City of Ann Arbor  
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Alexis Dileo, City Planner  
Ben Carisle, Interim Planning Manager

**RE: D-1 & D-2 Downtown Zoning Premiums – Ordinance Amendments**

Dear Ms. Woods and Planning Commission Members:

At the Tuesday, April 19<sup>th</sup> Planning Commission meeting, Amendments to the D-1 and D-2 Zoning Premiums were discussed. I briefly spoke to this issue, but I would like comment further. I am concerned that the Amendments will not accomplish the Commission's desired results, and I would like to explain why I think this is so.

Ann Arbor has the most viable downtown of any city in our state. The downtown's vibrancy, due in large part to the development of housing in our downtown area, is the envy of the community leaders in other municipalities across the state. There are segments of the present Zoning and Premium clauses that could use clarity and updating, but they do not need to be fully rewritten. It appears to me that the intent behind the proposed Amendments is to slow or even stop development in our downtown. This would not be in the best interest of our city. Our decisions, with a zoning amendment such as this, will either encourage the vitality of the downtown or kill it. Premiums are more likely to obtain the desired result if they are truly "incentives." A "stick" approach often discourages the desire even to participate. If an approach to a goal is not practical or obtainable through the defined path, it is doomed to failure or, at minimum, leads one to foolish measures to make it work.

The stated goal of the Amendments, per Ms. Masson-Minock in her report, is to *"incentivize unmet needs of environmentally sustainability, energy efficiency and workforce housing,"* all while meeting the stated city goals of "a

*sustainable downtown and increased density.*” It is my analysis and belief that the Amendments, as written, will meet neither the new goals, nor support the existing goals which have been the basis for the viable and robust redevelopment of our downtown community. Examples to this end follow with references to the Proposed Amendment language. To understand many of my comments it would be best to have the proposed amendments for reference (see *The Planning Commission Public Hearing Draft*, used for the April 19, 2016 Commission meeting) as you review this memo.

A. *D-1 and D-2 Downtown Districts, under the Downtown Character Overlay Zoning Districts, Section 5:*

This section on “*Building Design Requirements on Primary and Secondary Streets*” has been added to the Character Overlay Districts. It purposes a series of REQUIRED design requirement for the ground or street floor level. As one commissioner pointed out at the public meeting, if these design requirements were implemented none, or almost none, of our downtown historical district would be compliant.

The proposed requirements are, in my opinion, a narrowly composed set of regulations that do not appear to be well thought out. They seem to be a reaction to unpopular designs that exists, or are under construction, rather than guidelines that define a goal to be reached. Has this section been reviewed and vetted by our very own Design Guideline Committee? If not, why not? The guidelines should be, and need to be, a result of design professionals looking at long term implications and benefits— not a knee jerk response to what some may consider to be “bad design.”

B. *(Section 5:64. Premiums: Intent.)*

This section has been amended in ways I do not understand and find disturbing. For example, in section (1) para (b) why is the phrase “...*which encourages pedestrian activity along streets*” deleted? At the end of this section the language is further altered from an essential “...healthy and vibrant **street life**” to a “healthy and vibrant central **business core**.” Why the change in emphasis here? Are we willing to give up vibrant street life for the business core? Are they even mutually exclusive? Can we not have both?

Paragraph (d) of this section adds language as follows: “To provide incentives for the development of energy-efficient buildings with environmentally sustainable buildings” the following language: *to bolster efforts to reach the 2030 Challenge by the American Institute of Architects for all new buildings, developments and major renovations to be carbon neutral by 2030.* I did not know what this AIA Challenge is about. Can you explain it to me?

The following is but a small segment of on the web site for Architecture 2030 entitled Getting to Zero:

## Getting to Zero

*Getting to carbon neutral for a new building or major renovation is a two-step process.*

***The first step is design;*** *to integrate sustainable and passive design strategies that are low-cost or no-cost. This can get you 70-80% of the way there. For example, how you orient the building, shade the glass, incorporate daylighting, and passive heating and cooling strategies, and the materials and systems you specify.*

*These approaches dramatically reduce the energy the building requires.*

***The second step is to provide fossil-fuel-free energy;*** *ideally from on-site renewables, or from accessing district or utility-scale renewable energy produced off-site.*

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Most architects and developers of buildings are trying to implement the first step as defined above. This can be done by design and is usually implemented in a Silver LEED structure.

The second step—providing fossil free energy—is more challenging – and while there may be avenues being developed for single use retail or single family homes, how can these possibly be implemented in a D-1 or D-2 Zoning – mid and high rise construction? Is it suggesting a wind farm on the roof or solar panels, neither of which is economically viable if viable at all? Or will the majority of DTE’s electrical energy come from non-fossil fuels in the near future? Not likely. How are on-site renewables then to be implemented?

The above is an example of the impracticality of a significant portion of the proposed D-1 and D-2 zoning amendments.

### C. Amendments to: Section 5:65. Floor Area Premium Options.

The Proposed Amendments first will require, as a priority condition of obtaining any Premiums to the floor area, a new *Energy Efficiency Standards* and a *Pedestrian Amenity Provision*. Both of these are additional requirements for Premiums prior to and above the very difficult requirements for the new Premiums themselves.

I will pose questions to you, as well as to myself: Do you know what these Energy Standards actually mean? Do you have a reasonable idea of what they would cost to implement? Are they reasonable standards that can be obtained at a cost that does not dis-incentivize the developer/builder? I have reached out to architects and builders to understand these proposed new Standards. Prior to any vote on this Amended Ordinance you should do the same and have a full understanding of its impact. Will they get us to our goal? What is that goal?

**5:65 Floor Area Premium Options (f) (2) *The Pedestrian Amenity Provision.***

This Provision, in these proposed Amendments, is not a Premium (as presently stated in the Ordinance) but rather a requirement to **obtain** Premiums. As such, it is, as are many of the Proposed Ordinance changes, blatant down-zoning. I ask again, has this section been reviewed by our Design Guideline Committee?

How will this requirement stand up to implementation? During the meeting some of the Planning Commissioners questioned whether this provision could even be implemented on smaller sites and still allow for a viable project. **It will not.** Is this provision “fair” or reasonable to require? This Provision has the appearance of an add-on wish-list item, without integrated understanding or determination of how the full ordinance fits together.

**D. 5:65 Floor Area Premium Options (2) *Premium Options.***

The Proposed Amendment reduces the D-1 Residential Premium from the existing 300% to 150% (from a 400% base to 550% -Tier 1) and adds several options to obtain a 700% (Tier 2 – from 550% to 700%) FAR Premium.

There are now two steps to obtain a maximum of 700% FAR. The base is still 400% of the site, but the maximum realized via a Residential Premium is 550% FAR – or 150% over the base. This would be Tier 1. To obtain the 700% FAR it is necessary to implement Tier 2.

**Tier 1:** Along with the reduced Residential Premium, a second option to obtain Tier 1 requires an *Energy Efficiency* standard or basis that requires: “...40% or higher improvement over the state approved energy code.” This, per the proposed ordinance, is in **addition** to the prior requirement of the Energy Efficient Standards in section 5:65 (f) 1 (which requires use of 50% less fossil fuel than regional average/medium for that building type).

**Tier 2:** To obtain an increase from 550% to 700%, i.e. Tier 2, an environmental option requires the implementation of LEED Version 4 Gold or Platinum Certification.

I am in the industry and I do not have a clue as to the viability of implementing the above Energy Efficiency requirements or the cost to implement, on mid and high rise buildings in the **D-1 or D-2 Zoning** area, the LEED Version 4 Gold or Platinum Certification. These are newly defined and very aggressive forms of LEED. What is the cost? Are these requirements viable? Will this encourage development of these types of buildings in our downtown? Or will it dis-incentivize development in our core and take us backward? These are real and important questions that I do not

believe have even been properly asked and certainly not answered. How do you implement a policy when there is such limited understanding of the implications of the results?

Another Proposed Premium is termed, to my view disingenuously, the “*Workforce Housing Premium*.” Common parlance these days has workforce housing in the 60-80% area medium income (AMI). This zoning specifies 30-60% AMI, or those individuals in the \$16,000 to \$30,000 income range as workforce housing. Does it make any sense to approve an ordinance that has no basis for success? In this case its purpose is to create affordable housing. This proposed premium will NEVER create one “Workforce Housing” unit in the 30-60% AMI. It is not because a developer will not want to. It will be because it is not financially viable.

How is it even reasonable to propose creating housing for individuals making \$16,000 a year on **the most expensive property** in the city? This is a non-starter. If you want to have a chance of creating more affordable housing in our urban core, again, on the **most expensive property** in Ann Arbor, you may be able to, with the **proper incentives**, create a blend of 60-80% AMI.

However, there is one large problem that appears to be insurmountable at present. City attorneys have stated unequivocally that the city cannot enforce the existing affordable housing premium ordinance in the apartment market. The federal government has HUD programs which define rents for rental housing. The State under MISHDA does something similar. It is difficult to believe Ann Arbor cannot find a way to encourage and support less expensive housing in our community.

But to move on.....How does one expect to implement a new/revised affordable housing ordinance with the limitations above? I assume this is where the per-unit “payment in lieu” actually comes into play? In lieu of actually creating the affordable housing a developer would be required to make a payment of \$90,000—the amount stated at the Planning Commission meeting—per required affordable housing unit.

Using Urban’s 618 S Main development project as an example, I calculate the result as follows. There are 164 apartments. The proposed ordinance states that “10% or greater of the total usable residential floor area is designated as affordable units.” To make it an easier calculation say 10% of the units would be required to be affordable. Ten percent of 164 = 16.4 times \$90,000 per unit = \$1,476,000. This is an estimate of the amount of money that would be required to be paid to the city, per this revised ordinance, for the 618 S Main project. I will tell you right now, as the developer of 618 S Main, we could not have paid this amount and built the project—even with the Brownfield TIF incentives.

I have been working in Ann Arbor for over 25 years and in all that time the “City” has continually “talked” about creating affordable housing. But there has not been any kind of reasonable or concerted effort to do so. A gentlemen who spoke at the Planning Commission meeting stated

he owned rental property in Ann Arbor. He further offered the observation that for every unit in his building, the first \$250.00 of rent collected per month, per apartment, is paid to the city in property taxes. How can an apartment possibly be rented for \$500.00 or so a month with this kind of base property tax? There are ways, but the City has to realize that its costs, which it externalizes onto various developments in the form of fees and taxes, or in the form of unusual and extreme inefficiencies in its various departments, are a great part of the problem. Developers have to assume that as much a \$10,000 per unit is the cost, directly attributable to the city, to build in Ann Arbor.

There is an old saying, which many of us learned in the 60's, that goes, "are you part of the problem or part of the solution." It would be a benefit if the city would address many issues internally and minimize the pattern of externalizing all problems, and solutions, onto others.

I have expressed some of the above comments early on in the discussion to amend the zoning premiums. None were adopted.

I would be please to work with people of like mind to outline practical, functional and viable approaches to create work force housing and encourage environmentally sensitive development in our downtown areas. Growth and long term sustainability of our urban areas should be the purpose, the goal.