

From: Irvin A. Mermelstein [<mailto:nrglaw@gmail.com>]
Sent: Friday, July 17, 2015 6:29 PM
To: Kowalski, Matthew
Cc: Eaton, Jack;
Subject: Fwd: Re: 2250 Ann Arbor Saline Road

Dear Mr Kowalski,

The forwarded message was in reply to Wendy Rampson's email in response to my email to you. It is important that you are aware of its contents.

I have absolutely no intention of allowing the City to downgrade Lansdowne--a neighborhood that already has its share of problems inflicted by the City. I will be in touch with the developer's architect and attorney on Monday. Perhaps they will see that the better part of wisdom is to delay further action until a negotiated, rather than a legislated solution to the concerns of the taxpayers in this community can be arrived at.

Irvin Mermelstein

From: Irvin A. Mermelstein [<mailto:nrglaw@gmail.com>]
Sent: Thursday, July 16, 2015 3:39 AM
To: Rampson, Wendy
Cc: Eaton, Jack; Krapohl, Graydon
Subject: Re: 2250 Ann Arbor Saline Road

Dear Ms. Rampson,

Thank you for your response, but I am unconvinced about the need for the access road, which would transform Ascot Road into "Access Road." Indeed a representative of the developer is stated by others to me to have said that the availability of game day access in and out of the project is a "selling point" for the condos to be developed. A resident in Glen Leven told me yesterday that her neighbors are already looking forward to the access road as a convenient short-cut to Scio Church Road and Ann Arbor Saline Road. The access controls you refer to are a very slim reed on which to hang the integrity of a established and stable neighborhood zoned R-1.

On access for fire trucks, I refer to the following comments that Bill Higgins submitted on the question of emergency access:

The Commission should be informed that the rear access for the Complex requires reevaluating, based on the following information and our plan to study in detail, the latest site plan when it is available in detail:

1. There is no requirement for dual access, unless the number of units is at or exceeds 100, well above the 70 planned.
2. A primary highway (AnnArbor-Saline) fronts 2250 and is 1.0 miles from the responding Fire unit #6 on Eisenhower at Briarwood Circle.

3. Fire unit #6 is 1.8 miles from 2250 if routed to the rear of the complex via Briarwood Circle and South Main.
 4. Fire unit #6 is an additional .9 miles from 2250 frontage to 2250 rear, via A2Saline/S. Main/Scio Church/Chaucer/Ascot/Lambert.
- Obstacles exist for the passage from 2250 front to 2250 rear. The Planning Commission is obligated to consider Fire/Emergency provisions and other public concerns.

If you know Bill, then you know he very rarely does not know what he is talking about. He does his homework. He is entitled to an opportunity to protect his home, its value and the character of the neighborhood he has lived in for decades. Who is the constituency for this project? Who needs this project?

These observations raise the question: Why is this project so important that an emergency access is needed in the form of an access road into and from Lansdowne? How does a developer get this kind of special treatment, as well as what seems like a fast-track process through the Planning Commission, including a PC meeting mid-Summer with so many unresolved questions? There were many important and somewhat anguished comments that were made by residents of Lansdowne at the December 2, 2014 meeting, yet only the developer's voice seems to have been heard. What the developer submitted to the Planning Commission for purposes of the upcoming hearing was close to a deliberate provocation of the adjoining neighborhood, where criticism is turning to anger. The results--given the presence of the proposed project virtually in my back yard--could and should have been anticipated by the project's architect, whom I contacted a long time ago to obtain the name of the project's counsel.

The questions of special treatment, combined with the requirement for the purchase of FDD Credits for mitigation, invite a comparison to another project for which the City undertook special measures to assure completion: the UM Stadium Expansion, which I have been investigating for over two years. You were involved in the early effort to provide the University a way to provide an appearance of mitigation, but solely for the additional seats at the Stadium, in the form of a purchase of 8 FDD Credits. There is an email from you to Anne Warrow on November 29, 2006 about that calculation.

As you may know (or not), after the apparent 8 FDD Credits resolution was reached and the funding for the Stadium had been approved by the Regents in June 2007, the City was made aware that the Expansion would include an increase in the size of the sanitary sewer outflow line from the Expansion from the old 6 inches to 8 inches (a huge difference) in order to accommodate a doubling of the "fixture count" (that is, bathroom fixtures), apparently for half-time. This was a problem for a few hours during each year. The City and the University agreed at some point thereafter that the FDDP (a program to remove **storm water** from the sanitary sewer system) would be used (or perhaps abused) in favor of the University to mitigate a problem caused by increased flows of **sanitary sewage** into the sanitary sewer so that the project could proceed. From 2006 through 2010, the City and the University haggled over the terms of the mitigation that could be provided by a purchase of FDD Credits.

Ultimately, in July 2010, the City and the University agreed that the City would **advance** the University 127 FDD Credits from its "bank" at the City's cost (as stated in City Council Resolution 11-007) of \$10,040 per FDD Credit, with a unique mitigation value of 5 g/p/m peak flow versus 4 g/p/m everywhere else. The City (not a developer) would then perform 127 FDDs "to restore the bank. The University, according to both Resolution 11-007 and internal documents obtained under the Freedom of Information Act, was further required to buy an additional 13 FDD Credits, which were put at the disposal of the City Council to "assign" as it deemed fit. The City used these funds as part of the financing for 13 FDDs.

The City invoiced the University for the amount of the entire purchase, about \$1.4 million. This was composed of the \$1.275 million for the FDD Credits for mitigation purposes, plus \$130,520 in (according to Resolution 11-007) "additional non-monetary consideration" (which is an odd way to refer to cash), with a number of explanations offered both in the aforesaid City Council Resolution and in the agreement between the City and the University. In the Resolution, the \$130,520 was stated to be in exchange for "the burden" of selling the 127 FDD Credits (whatever that means) to the University for the Stadium Expansion. In the Agreement, it was stated to be to cover the "lost opportunity cost" of selling the Credits to others at a higher price!

Resolution 11-007 states:

These 13 FDDs are available for City Council to assign as the Council deem desirable. The most common assignment of credits has been used to support public projects including the development of affordable housing. For this transaction the value of an FDD was determined to be \$10,040.00 each. This price includes in-home and out-of-home construction, construction management and overheads. Total value of the 140 FDDs purchased by the University is \$1,405,600.00.

This suggests that the payment and assignment of such "additional non-monetary consideration" by developers (or by the University) was a practice that had occurred often enough in the past to be referred to as "common" and raises the question whether such payments and assignments continue. In that case, this amount was paid in the unusual form of a paper check hand-delivered to the City on July 29, 2010, and deposited the same day by a City employee in the "FDD Account" or the FDD "bank," an account as to which there do not appear to have been "internal financial controls" usually applicable to such expenditures. The Expansion was, in fact, substantially complete before this payment, which was made at the eleventh hour, with the Stadium to be rededicated on September 4, 2010. Oddly, Resolution 11-007 (which still spoke of a transaction and construction in the future), was passed on January 3, 2011, over five months after money and FDD Credits had already changed hands. The above referenced agreement was similarly dated July 30, 2010, the day after the funds had already been received and deposited. Such re-sequencing of events and financial transactions are audit flags and I intend to ask the City Administrator for such an audit at the appropriate time.

Though it is not entirely clear, the documents also suggest that the transaction may have involved the expenditure of State and Federal funds that are a part of financing or bridge financing of FDDs through the Strategic Water Quality Initiatives Fund (known as "SWQIF" and pronounced "SKWIFF"). Indeed, the Council "assigned" the FDD Credits (according to the "most common" practice) to two affordable housing projects, one of which cratered after the award. It would appear that these amounts (totalling the \$130,520) were paid out of the "FDD Account," which is where the money was. It is not clear that these funds ever found its way into or out of the City's normal accounts.

If such assignments were "common," then the payments were also presumably "common" and may still be "common." Other evidence, also obtained under FOIA, makes it hard to avoid the term "kickback" when referring to such payments. The Planning Commission and the City Council have nonetheless continued to approve FDD-dependent projects, about which I wrote on December 2, 2014, that the residents don't want and resent, such as this project and 413 East Huron. The FDDs performed by the City or City contractors are paid for with State funds (for the portion on private property) and federal funds from EPA. The latter funds are for the construction of the so-called "curb drains" already conveniently drilled up and down Ascot Rd and other Lansdowne streets, though EPA has been left confused by the vagaries and complexities of SWQIF financing as to where the federal funds are in the project.

In doing so, with the possibility that payments similar to the Stadium FDD Credits deal are still being paid, the City appears to have forgotten that it is an issuer of municipal sewer revenue bonds subject to regulation under federal and state securities laws. If the payments (or just the payment for the Stadium Expansion) are as described in this email, or similar to that description, then that raises questions about the adequacy of disclosure to the bond markets. Such issuers are not permitted to receive such payments, and if they are received, they need to be disclosed as they may be "material" to reasonable investors who purchase such bonds, including pension funds and mutual funds.

I have brought these matters to the attention of the US Securities and Exchange Commission staff, to whom I am continuing to report. I had intended to discuss this with the City's bond counsel first (at least as a courtesy), but when I repeatedly requested the name of the City's bond counsel from the City Attorney's Office, I was refused, which precipitated the report to the SEC Enforcement Division. That submission includes the following observations, in relevant part:

If a developer had special problems with their project (like the seemingly insoluble Stadium Expansion sanitary sewage mitigation problem), or wanted priority in the FDD/DOM process ... the easiest way for the developer to [make an improper payment] that could be distributed through multiple channels, from multiple payers at the City to a range of recipients ... was and remains by simply manipulating the FDD Credit process.

First the City sets both the number of required FDD Credits ... and the price for FDD Credits, so the City can make the FDD Credits very expensive for the developer in

need. That information is never disclosed publicly, except in the case of the Stadium FDD Credits transaction, where City Council Resolution 11-007 stated that the FDD Credits were being sold to the University at the City's cost of \$10,040. (This price is also never in development agreements.) Or, as in the case of the Stadium Expansion, the City can require the developer ... to purchase more FDD Credits (which is just a nickname for cash) than the City establishes as the required number for mitigation, with a kickback to the so-called "FDD account" or FDD "bank" of the additional "credits."

The SEC may act or not--they may investigate or not--but I would suggest two things in the interim. First, I suggest that the full particulars of the FDD transactions contemplated for this project be disclosed to residents--how many, how much they cost, how the number was calculated, any agreements between the City and the developer concerning the use of FDD credits, credits in excess of requirements for mitigation, etc.-so that residents can assess the propriety of the deal in the sunshine.

Second, in order to allow time for this to occur; for residents to meet and discuss the matter further; and for discussions with the developer of a more acceptable project--and as a show of the good faith that many residents believe has been lacking--the consideration of the project scheduled for July 21 should be delayed. There is absolutely no reason for the haste that seems to affect this project's consideration. I would think the developer would want to allow time for this process.

Residents have specific proposals they wish communicated directly to the developer for a project that would be doable and acceptable to residents, with information also provided to Planning Commission staff to promote a constructive dialogue. Further, as I have advised Council Member Briere by a detailed email (to which I received no response), the City has no need to perform ANY further FDDs and there are cheaper, easier and non-invasive means for achieving **measurable** storm water mitigation, which measures have been pursued successfully and without social disruption in other communities, notably Naperville, IL, where mitigation cost the city there \$719.77 per house, rather than the the City's "cost" of \$10,040 per FDD.

I suggest (without any intent to criticise) that the Planning Commission and staff have a steep learning curve about these particular alternatives, which were cavalierly and disingenuously dismissed by the contractors working on the Sanitary Sewer Wet Weather Evaluation. The CAC for the SSWWE, at least on this point, were not well informed by the engineers and "public engagement" contractors responsible to provide reliable information to them. The public are not "stakeholders." They are citizens and residents and require less "public engagement" and more actual public participation.

Thank you again for the courtesy of your reply. I hope and expect you will take these views into account. Please place this email in the Planning Commission Packet for the July 21 meeting on the assumption that 2250 will remain on the agenda.

Sincerely,
Irvin A. Mermelstein

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On Tue, Jul 14, 2015 at 11:37 PM, Rampson, Wendy <WRampson@a2gov.org> wrote:

Mr. Mermelstein:

Thank you for taking the time to express your concerns about the 2250 Ann Arbor-Saline site plan proposal, which will be considered by the City Planning Commission on July 21. Your email will be included in the Planning Commission agenda packet for that meeting, and you are welcome to speak at the public hearing.

As a point of clarification, the Fire Marshal has asked for this paved emergency driveway to be provided. The current proposal shows a paved emergency driveway at Lambeth with a gate at the property line and a "knox box". A knox box is small safe that holds building keys for fire departments, emergency medical services, and police to retrieve in emergency situations. Emergency responders hold master keys to boxes in their response area.

To address concerns about use of the driveway for general access, the site development agreement has been drafted to include a statement that removal or opening of the gate to allow general vehicle access will be a violation of the site plan and enforceable against the property owner. The site development agreement is a legally binding document between the City and the property owner.

For more information about the project, please feel free to access the staff report, which will be available after 5 pm on Friday. To access the full agenda and packet materials, please follow the steps below:

- Go to <http://a2gov.legistar.com/Calendar.aspx>
- Select "2015" and "Planning Commission, City" from the drop-down menus at the top of the page.
- Click on the "Search Calendar" button.
- The agenda and packet materials may be found by clicking the "Meeting Details" link for the meeting date.

Regards,

Wendy Rampson, AICP
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