

Ann Arbor City Council Regular Session: September 5, 2023
Email Redactions List Pursuant to Council Resolution R-09-386

Sent Time	TO	From	CC	Redactions	Reason for Redaction
7:09 PM	Dharma Akmon	Arbor Imaging		Personal Contact Information	Privacy
7:18 PM	Dharma Akmon, Lisa Disch	Rita Mitchell		Personal Contact Information	Privacy
8:41 PM	City Council All	Tom Stulberg		Personal Contact Information	Privacy

From: [Arbor Imaging](#)
To: [Akmon, Dharma](#)
Subject: Re: MacTechnics = Ann Arbor Arts + Creative Industries Economic Recovery ARPA Grant
Date: Tuesday, September 5, 2023 7:09:08 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

I look forward to this project of art and community building.

On Mon, Sep 4, 2023 at 8:35 PM Akmon, Dharma <DAkmon@a2gov.org> wrote:

That is great to hear, thank you!

--

Dharma Akmon

Councilmember, Ward 4

View and sign up for my newsletter at <https://www.dharmafora2.com/news>

From: Arbor Imaging [REDACTED]
Sent: Thursday, August 31, 2023 12:11 PM
To: Akmon, Dharma <DAkmon@a2gov.org>
Subject: MacTechnics = Ann Arbor Arts + Creative Industries Economic Recovery ARPA Grant

You don't often get email from [REDACTED]. [Learn why this is important](#)

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Hello Councilperson Akmon,

I hope this message finds you in good health. My name is Chris Anderson and I am a Board Member of the non-profit computer literacy group, MacTechnics. I live in Ward 4 however our non-profit is located at New Center in Ward 1.

I am writing to express my heartfelt gratitude for the incredible opportunity to receive the Ann Arbor Arts + Creative Industries Economic Recovery ARPA Grant. It is with great enthusiasm and appreciation that I acknowledge the significance of this grant, not only to MacTechnics and myself, but also to the community of Ann Arbor as a whole. With the grant funds, we intend to create a community mural in collaboration with the kids of the Neutral Zone while capturing the event on video for future generations. Also, a 360 camera educational kiosk demonstrating the camera and creating a 360 degree visual access to the event for all, will be available.

I am excited to embark on our project and to see the positive impact it will have on our community. I look forward to sharing the progress and the final outcomes with you and our fellow Ann Arbor residents.

With best regards,

Chris Anderson

MacTechnics Board Member

<https://www.mactechnics.org>

<https://arborimaging.net>

<https://www.instagram.com/arborimaging/>

From: [Rita Mitchell](#)
To: [DharmaforA2](#)
Cc: [Akmon, Dharma](#); [Disch, Lisa](#)
Subject: Re: Ch. 40 Compliance
Date: Tuesday, September 5, 2023 7:18:31 PM

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Hi Dharma and Lisa,

Thanks for the note. You know I'm interested in making progress on Chapter 40. Thank you for your help.

Rita

On Sep 5, 2023, at 6:26 PM, DharmaforA2 <dharmafora2@gmail.com> wrote:

Hi Rita,

I have updated you about this repeatedly. CM Disch and I are moving this forward with staff as quickly as can be done. I will let you know when there is an update. I can reach out to Mr. Reiser to see about getting back to Peter.

Dharma

On Tue, Sep 5, 2023 at 6:19 PM Rita Mitchell [REDACTED] wrote:

Hi Dharma,

I plan to join Mr. Marshall at the hearing scheduled for Thursday, September 7. It's unfortunate that the Community Standards team and Mr. Reiser have not responded. Regardless, I think that it's time to move the Chapter 40 revisions forward to a more active process. I am speculating that the current section 3:16 terms "outside of a cultivated bed or planned natural landscape, no vegetation shall be permitted at a height greater than 12 inches." contribute to the issue at hand. I feel for the frustration of both the property owner and staff at having limited information. I strongly feel that we should have a discussion with both the legal team and the Community Standards team, and work on modifications that are easy to understand by all, support environmental goals, and move all away from what may be difficult to discriminate, likely interpretations of aesthetic issues.

I hope that we can discuss soon,

Rita

Begin forwarded message:

From: John Marshall [REDACTED]
Subject: Ch. 40 Compliance
Date: September 5, 2023 at 11:25:22 AM EDT
To: cdixon@a2gov.org
Cc: [REDACTED] Stephen Colby Brown
[REDACTED] "Disch, Lisa" <ldisch@a2gov.org>,
"Akmon, Dharma" <DAkmon@a2gov.org>, "Briggs, Erica"
<ebriggs@a2gov.org>

Hi Chani,

I spoke with you last week about an inspection conducted by Jodi Dyer 836 on August 23 @ 1236 Wines Drive.

I need to know if it has been determined that I am in compliance with Ch. 40.

In that phone call you told me that the city attorney's office had instructed you that Ms. Dyer's methodology was incorrect and could not be used to determine compliance (i.e., picking up strands of grass lying flat on the ground lengthwise and raising them up to measure height).

You also told me that there was no report written, which seems odd to me.

I was fully in compliance at the time Ms. Dyer inspected my property and am in compliance now—my burgeoning meadowscape completely destroyed by the need to meet the 12 inch standard of Ch. 40.

During our call, you did not indicate to me whether I am in compliance. Please let me know that it has been determined that I am in compliance.

I realize that Ms. Dyer was just trying to do her job as your office had set procedures, but the grass was well under 12 inches. (See attached photos.

The bottom of the sign is 12 inches from the ground and the balls are 6 1/2 inches.)

Best regards,

Peter Marshall

IMG_2751.jpeg



IMG_2752.jpeg



IMG_2753.jpeg



<IMG_2753.jpeg><IMG_2751.jpeg><IMG_2752.jpeg><IMG_2753.jpeg><IMG_2753.jpeg><IMG_2753.jpeg><IMG_2753.jpeg>

From: [Tom Stulberg](#)
To: [City Council](#); [Kaur, Atleen](#); [Dohoney Jr., Milton](#)
Subject: Fw: Response re Comments regarding the SouthTown application and conditional rezoning
Date: Tuesday, September 5, 2023 8:41:14 PM

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

I realized that I did not send this to the full city council, so here it is:

From: Tom Stulberg [REDACTED]
Sent: Tuesday, August 8, 2023 2:36 PM
To: Disch, Lisa <LDisch@a2gov.org>
Cc: Kaur, Atleen <AKaur@a2gov.org>
Subject: Response re Comments regarding the SouthTown application and conditional rezoning

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Lisa,

The way you phrased it sounds good at first blush, but it is wrong. While it is certainly true that each rezoning request is evaluated on its own merits, and you are not "obligated" to approve anything, it is also a reality that, by approving this application for rezoning, the city knowingly puts itself in a position of being sued should it deny certain other applications, and the city would not have a defensible position.

It is the responsibility of city council to not knowingly expose the city to lawsuits, particularly ones it knows it cannot win. It is the responsibility of the city attorney to keep the city council from doing so should city council not know better.

A lot was said relatively recently about city council not putting itself in an exposed position by voting to deny "By-Right" applications. The city could turn down one of those, but it was said then that we would lose if sued, and so we should not put ourselves in that situation.

Here is how it plays out in the real world:

1. City council approves the current application for rezoning with conditions for South Town
2. An applicant asks for C1A/R without conditions along the east side of State Street north of South Town and south of Arch Street. Note that north of Arch Street is already zoned C1A/R.
3. The applicant is turned down.
4. The applicant sues.

5. The city caves in immediately.

or 3. The applicant threatens to sue and is approved because city council is informed by the city attorney that the city does not have a defensible position.

Please advise who you sought advice from? Was there any specific case law citation provided to you? If so, please provide it, or I will assume there was none provided.

Also, as for your statement at the council meeting about PUD being not appropriate because there is a valid zoning category, that is not correct.

1. C1A/R was designed for the Campus Business District, not merely anywhere near campus. People wanting to misuse it keep conveniently ignoring that. This "debate" has been addressed at length, and I can repeat it later.
2. There is NOT a straight zoning category being requested here. It needed a variance and relied on conditions being volunteered in order to work. So, your statement is incorrect, and PUD is indeed appropriate. A rezoning with conditions and a variance is in essence a PUD, a PUD with everything but the community benefit aka affordable housing units or payment in lieu.
3. Let's compare this to the Five Corners development. It is currently zoned C1A/R. It is seeking a PUD. Why is that appropriate and South Town PUD not? That location actually IS in the Campus BUSINESS District, precisely where C1A/R was intended. I have not thoroughly examined this aspect of the argument with regards to Five Corners. I think it would be beneficial for you to seek advice on that from your source(s). (For everyone's clarification, you might as well ask why PUD was valid for 721 S. Forest rather than C1A/R. I'm not making a claim either way there, since I haven't examined it in detail, but we should all understand this issue because inconsistent application of zoning laws is a big legal exposure for the city.)

Remaining unaddressed is the issue of the conditional zoning requested that is clearly the type of conditional zoning that the courts rule against. This is a fatal flaw. I will rephrase what I said in my letter:

Two of the conditions, the height limit and the STRs, serve the applicant's private interests, and are not community benefits, because the current zoning, which has a lower height limit than the requested condition and totally bars NPR STRs, already protects residents re those items. These are precisely the types of conditional re-zonings that have been routinely rejected by the courts.

Note that some conditional zoning is ok; the electrification condition is fine.

Please seek advice on this unaddressed conditional zoning matter, and please provide case law citations otherwise I will assume you have none. If I haven't already, I can provide you with a 10MB document that covers the case law for this issue.

Thank you,

Tom

From: Disch, Lisa <LDisch@a2gov.org>

Sent: Tuesday, August 8, 2023 8:27 AM

To: Tom Stulberg [REDACTED]

Subject: Re: Comments regarding the SouthTown application and conditional rezoning

Tom,

Let me reassure you that I sought advice on this question and I stand behind what I said at the Council Table last night:

- o I would like to make it clear that the city's approval of SouthTown would NOT obligate us to approve future applications for c1A/R zoning in that area and it would not open the door for a flood of STR's in that area. Zoning is considered on a site by site basis. If all things were equal on a future rezoning petitions, this decision would make a compelling argument, but it would not force our hand. Even in similar geographies, the attributes of a rezoning are rarely identical from petition to petition.

Lisa

Lisa Disch | Ward One City Council Representative

City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI 48107-8647

ldisch@a2gov.org | Watch City Council Live

At: <https://www.a2gov.org/departments/communications/ctn/Pages/watch.aspx>

From: Tom Stulberg [REDACTED]

Sent: Monday, August 7, 2023 7:20 PM

To: City Council <CityCouncil@a2gov.org>; Kaur, Atleen <AKaur@a2gov.org>;

Dohoney Jr., Milton <MDohoney@a2gov.org>

Subject: Fw: Comments regarding the SouthTown application and conditional rezoning

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Re-sending so as to have it handy.

From: Tom Stulberg [REDACTED]

Sent: Thursday, August 3, 2023 3:52 PM

To: akaur@a2gov.org <akaur@a2gov.org>; Ann Arbor City Council <CityCouncil@a2gov.org>

Cc: Dohoney Jr., Milton <MDohoney@a2gov.org>

Subject: Comments regarding the SouthTown application and conditional rezoning

To the city attorney and city council:

SouthTown's application's conditional zoning request should be denied, for these reasons:

1. It is the kind of conditional zoning that the courts have very clearly ruled against.
2. It would create significant possible repercussions for property owners and tenants for many blocks nearby, in the area commonly known as Lower Burns Park. This is because the city's approval of SouthTown would prevent denial of future applications for C1A/R zoning in that area, thus allowing unlimited non-principal-residence STRs and a downtown intensity of redevelopment there.
3. There is a legal remedy - a PUD - to have this same site plan and conditions approved without the problems of 1. and 2.

As background, some incorrect comments were made by some city council members regarding conditional zoning at the city council meeting about Morningside's Beekman/LowerTown final phase. This may have arisen because that involved a request to remove conditions that had been previously volunteered by the developer and were approved, rather than a fresh request for conditions. Conditional zoning is complex and sometimes counter intuitive. So, we should start by discussing the conditional zoning request in the upcoming vote on SouthTown. (Note, I am not an attorney and will use layperson's terminology. I may get a legal term wrong, but I am confident of the analysis.)

I am forwarding to you (at the end of this email) what I sent to Planning

Commission prior to their vote to recommend approval of this rezoning request and the site plan. But let's address #2 first.

Zoning Conditions must be volunteered by the applicant and may not be requested by the city. If the city approves a rezoning from R4C to C1A/R with the requested conditions for SouthTown, the city will not be able to legally deny a similar rezoning request to C1A/R for any of the properties in the blocks bounded by State Street and White Street north of SouthTown, all the way to Arch Street where the zoning is already C1A/R. (See the second attachment for a map.) And the city may not ask any future applicant there to match the conditions of SouthTown. The city is not allowed to ask for ANY conditions from those future applicants. So, the counter intuitive part is that all of the "good" conditions that SouthTown asks for can be eschewed by these future applicants and the city cannot deny those applicants for lack of the same, or similar, conditions. Yes, each rezoning is reviewed on its own merits, but should SouthTown be approved as applied for, the city would lose lawsuits from any applicants that are denied a straight up C1A/R rezoning request in the described area. City council would be effectively giving up its discretion regarding things such as heights, setbacks, and long-term vs. short-term rental conditions that currently exist in that residentially zoned area.

Let's look more closely at the LTR vs. STR issue.

Ann Arbor prohibits non-principal-residence short term rentals (STRs) in residentially zoned areas, but permits them in other zoning, such as office, commercial, or other mixed-use. Note, they are not permitted in TC1 either. Here is the UDC

table: <https://www.a2gov.org/departments/planning/Documents/UDC%20STR%20Permitted%20Use%20Table.pdf>

The properties east of State Street and south of Arch Street are zoned R4C, which is a residential zoning and thus prohibits non-principal-residence STRs. The zoning category C1A/R is considered a mixed-use zoning category, so it permits non-principal-residence STRs. C1A/R can be all residential, all commercial, or any mix of the two. Under current market conditions, it will likely be primarily used for predominantly residential projects, as is the case for the SouthTown application. SouthTown plans to have up to 30% STRs. (I leave it to others to debate the merits of allowing any non-principal-residence STRs at that location.)

But that opens a door to ALL of the R4C lots in the blocks bordered by State Street and White Street north of SouthTown and south of Arch Street being rezoned to C1A/R. (The west side is all U of M athletics.) The existing houses can then all be converted to non-principal-residence STRs or the lots could be combined and tall buildings with 100% STRs (essentially hotels) could replace

the existing long term housing stock. How far east will that spread? Just to White Street? All of Lower Burns Park? That is hard to say.

If the city makes a conscious decision to do this through the revision to the Comprehensive Plan, then so be it. (It doesn't seem likely that we would, given recent conversations and decisions, such as not to permit them in TC1.) But approval of SouthTown makes this possible in a backdoor manner, seemingly accidental. The property owners and residents of Lower Burns Park would be aware of this if done through a comprehensive plan revision. Do you think they have any clue now? I don't think so.

I took an unscientific poll on NextDoor. There were 165 respondents. Over 3/4 would not be in favor of more non-principal-residence STRs near campus. I wouldn't rely on this poll to make a decision, but it does suggest that this is not something we should accidentally back into because of a lack of understanding the ramifications to nearby properties when approving conditional zoning.

There is a simple remedy for this, as I mentioned above as #3. The exact same site plan for SouthTown could be approved as a PUD. There would be no problematic cascading effect if done that way.

Note that a PUD would also "replace" the approximately 35 moderately priced units being demolished for SouthTown with approximately 35 affordable units out of the 215 units in the plan (or a payment in lieu to the affordable housing fund).

When reading the letter below that I sent to Planning Commission, please allow me to add the italicized sentence to this statement:

The existing zoning for SouthTown does not permit a height that exceeds the proposed condition in the rezoning request. Thus, the status quo already "protects" us from that. The rezoning with this condition serves the applicant's private interests, not the public's. The courts don't like this. *Similarly, the existing zoning does not permit any non-principal-residence STRs, so the status quo already protects us from what the voluntary condition presumes to protect us from.*

Some people may question the likelihood of some of this happening, but zoning is law, a rezoning is a change to the law, and the possible repercussions must be raised and discussed and addressed prior to creating new legal rights.

Thanks,

Tom

(Prior email to Planning Commission)

Planning Commissioners:

There is a lot to like about the SouthTown application, especially in the attention paid to sustainability.

If you like the SouthTown development proposal, there is an appropriate way to approve it. You have a road map provided for you by The Garnet at 325 E. Summit. Similar to The Garnet, you would reject the current application, and the same or similar plan could be re-submitted as a PUD. You could then appropriately approve it. It would require the developer to spend some extra time, and there would be an affordable housing component added - either units built on site or a payment in lieu. (The developer wouldn't have to go back to the drawing board, since the plans have already been reviewed, but the clock would have to be restarted for the proper meetings and notices for a PUD application.)

As in the case of the Garnet, the conditional zoning requested falls into the categories of conditional zoning that are frowned upon by the courts. See my comments on this at the end of the email.

I also want to point out the inappropriateness of using C1A/R at this location. It is not close to the Campus BUSINESS District. This zoning category was not intended for this location. D1, D2, C1A, and C1A/R are our city's downtown core and transition zoning categories and have certain urban core characteristics clearly designed for that purpose. This has been covered thoroughly. Please review the following documents:

1. C1A and C1A/R are covered on pages 11-15 of the **attached** Agenda Responses from the 7/6/20 City Council meeting. And another map on the last page (21). Decent questions. Short answers. Very helpful maps.
2. This link to communications to CPC from 12/15/20 has a letter from me (which imbeds a 3/31/17 Planning Staff letter) and an excellent letter from Ralph McKee: <http://a2gov.legistar.com/View.ashx?M=F&ID=9017680&GUID=4498E800-DB5A-45D4-AFB2-E6FB372FE50B>
3. The 11/17/17 letter from Susan Friedlaender, which imbeds a planning department memorandum starting on page 8: <http://a2gov.legistar.com/View.ashx?M=F&ID=5564648&GUID=D2F06BC8-BE4D-4EA9-BD2A-65EB818FFE25>

Conditional Zoning: (I wrote this for The Garnet application, which was appropriately turned down. It applies to SouthTown as well.)

The city of Ann Arbor does not apply zoning law appropriately, which includes how it deals with conditional zoning. It is getting it wrong again here.

Conditions are supposed to benefit the community not merely benefit the applicant. Planning department is trying to claim the benefit to the public is that the Garnet can't be replaced by a different (taller) building once the zoning is approved. Their conditions make it so they can't change their site plan without asking for a rezoning. But that is not a benefit to the community because the status quo already protects us from that. Leave it C1B and there is no issue of inappropriate height. Further, their conditional rezoning makes the community worse off because now someone else can get C1A or C1A/R nearby and there do not have to be any VOLUNTARY conditions on the next one.

I have a 10MB document that has excerpts and comments on many legal cases around the country specifically about conditional zoning. Yes, I read the whole thing. If anyone wants it, I'll share it. It is from "the" treatise on zoning law.

Here are applicable highlights from it:

"In this respect, a rezoning with conditions may be held invalid where the police power is bargained away, where the conditions imposed are illegal or unreasonable or where the rezoning primarily furthers private interests rather than the general welfare or otherwise constitutes illegal spot zoning."

"courts approving of rezoning with conditions have held such rezonings invalid when found to primarily benefit a private owner rather than the general welfare or when such action constitutes otherwise illegal spot zoning."

"the imposition of restrictive conditions usually benefits the surrounding properties and adversely affects the owner of the rezoned"

The existing zoning for SouthTown does not permit a height that exceeds the proposed condition in the rezoning request. Thus, the status quo already "protects" us from that. The rezoning with this condition serves the applicant's private interests, not the public's. The courts don't like this.


(I am not an attorney and have tried to write this in layperson's terms for the commissioners. The city attorney's office could perhaps rephrase it more artfully.)

Thank you for your consideration.

Tom

From: [Beaudry, Jacqueline](#)
To: [Radina, Travis](#)
Subject: RE: Kozachenko Historical Marker
Date: Tuesday, September 5, 2023 10:06:04 PM

I think we have most of the information from the Resolution, except for the excerpt from her speech. I will add that. It will be a good quote for the actual marker.

Jacqueline Beaudry, City Clerk (she/her/hers)
President, Michigan Association of Municipal Clerks
2019 Michigan City Clerk of the Year
Ann Arbor City Clerk's Office | Guy C. Larcom City Hall | 301 E. Huron, 2nd Floor · Ann Arbor · MI · 48104
734.794.6140 (O) · 734.994.8296 (F) | Internal Extension 41401
jbeaudry@a2gov.org | www.a2gov.org
 Think Green! Please don't print this e-mail unless absolutely necessary.

From: Radina, Travis <TRadina@a2gov.org>
Sent: Tuesday, August 29, 2023 11:15 PM
To: Beaudry, Jacqueline <JBeaudry@a2gov.org>
Subject: Kozachenko Historical Marker

Clerk Beaudry,

After having several conversation with former Councilmember Kozachenko, could we connect again re: the state historical marker application (I'm assuming it has not been submitted yet, but needs to get going ASAP)?

Travis

--

Travis Radina
Ann Arbor Mayor Pro Tem | Councilmember, Ward 3
(he | him | his)

City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104
<https://www.a2gov.org/>

From: [BRIAN CHAMBERS](#)
To: [City Council](#)
Subject: Thank you for the obvious face-valid decisions tonight!
Date: Tuesday, September 5, 2023 10:07:55 PM

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Mayor and Council:

Oh my, what a set of call-ins, right? What's amazing to me is how many of the regular gad-flies persist in having to voice their view-points at almost every meeting. You all held firm, so kudos!

I'd love to call in more often, but I assume you know you have my support, and I'd rather not be grouped with the regulars.

So, thank you for more emphasis on climate during home sales, and thank you for increasing the housing density just down the street from me!

We'll have to catch-up soon, as I've continue my efforts, but more squarely focused on the U-M. I'll not make any premature claims, but rest assured, I've not been sitting idly around . . . working paper #3 is still under-work. . . it'll be a doozy !

Yours for equity-based sustainable development,

Brian

Ward 3