



TO: Mayor and Council

FROM: Sumedh Bahl, Community Services Area Administrator
Jackie Beaudry, City Clerk
Craig Hupy, Public Services Area Administrator
Nick Hutchinson, City Engineer
Matt Kulhanek, Airport Manager
Wendy Rampson, Planning Manager
Shryl Samborn, 15th District Court Administrator
Cresson Sloten, Systems Planning Manager

CC: Steven D. Powers, City Administrator

SUBJECT: Council Agenda Responses

DATE: 7/20/15

MC-2 – Appointments - Confirmations

Question: Is Mr. Rapundalo still associated with MichBio? (Councilmember Eaton)

Response: Yes, Mr. Rapundalo is President and CEO of MichBio

Question: When did MichBio last receive support from SPARK? (Councilmember Eaton)

Response: MichBio has not received funds from the LDFA. SPARK has paid MichBio for a variety of business purposes during 2007 – 2014.

Dues – SPARK’s dues to be a member of MichBio. SPARK’s Business Development paid for these expenditures. (\$2,720)

Sponsorship/Advertising – In 2008 & 2010, SPARK sponsored or advertised at MichBio events. SPARK’s marketing budget paid for these expenditures. (\$12,000)

Pre-Seed Fund Loan Reviews – The Pre-Seed Fund represents monies from MEDC to SPARK for investments in early stage companies throughout Michigan. MichBio was hired to review some of the loans. MichBio was paid from the Pre-Seed Loan fund. (\$8,000)

CA-1 – Resolution to Approve No. 1 to the Agreement with the Washtenaw County Sheriff’s Office for Drug Abuse Screening and Monitoring Services for Sobriety Court, Mental Health Court and Veterans Court Defendants (\$49,900.00)

Question: I am a bit confused on the funding for this \$50K amendment. The cover memo indicates the total state grant is not changed (still \$282K) and this is just a line-item adjustment, so what is now not going to be funded that was originally planned to be funded with the state funds? (Councilmember Lumm)

Response: Due to the relative newness of the Michigan Mental Health Court Grant Program (MMHCGP), the 15th District Court (grantee) overestimated the services needed from Community Support and Treatment Services (CSTS) and underestimated the need for services from the Washtenaw County Sheriff’s Office Community Corrections Division. The State Court Administrative Office (grantor) has approved the Court’s request to move funds from CSTS in the amount of \$28,000.00 to Community Corrections. The State Court Administrative Office has also approved the Court’s request to move grant funds in the amount of \$6,900.00 from personnel and fringes to Community Corrections.

B-1 – An Ordinance to Amend Chapter 55 (Zoning), Sections 5:10.20 and 5:10.20.A Downtown Character Overlay Zoning Districts Building Massing Standards (CPC Recommendation: Approval – 7 Yeas and 0 Nays)

Question: We all received a memo last week from the Old Fourth Ward Association. The memo suggested that we consider how to better protect landmark trees during development and I had asked staff to think about whether changes to the Natural Features Ordinance could be made to improve the landmark tree protections. I would appreciate a response on that even if it can’t be done today. (Councilmember Lumm)

Response: Staff has discussed this. Staff cannot say with certainty that the current condition of the tree is due to construction activities. Based upon the Chapter 57 guidelines, site plan for 413 E Huron included “Landmark Tree Maintenance Program” requirements. Staff recommends evaluating the need to make any changes to Chapter 57 only after Landmark Tree Maintenance Program requirements have been completely implemented.

B-5 – An Ordinance to Amend Chapter 55 (Zoning), Rezoning of 53.61 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Woodbury Club Apartments, Southeast corner of Nixon Road and M-14 (CPC Recommendation: Approval – 9 Yeas and 0 Nays) (Ordinance No. ORD-15-13)

Question: In response to my question on June 15th regarding the City’s potential purchase of 25 acres of parkland, the response indicated that “city staff are awaiting a response from the developer on the City’s most recent offer.” Can you please provide an update on the current status? (Councilmember Lumm)

Response: There is no change in the status. Negotiations are continuing.

Question: Also in response to a question June 15th on traffic in the area, staff indicated that while the Nixon/Green/Dhu Varren intersection was identified as a problem, “neither study identified other areas in the vicinity as being in need of modification.” Can you please provide the data from the two traffic studies that support that conclusion? (Councilmember Lumm)

Response: The Woodbury traffic impact study modeled impacts of the new development on four intersections along Nixon Road: Dhu Varren, Green, Bluett and Huron Parkway. The results of the modeling are discussed on Pages 7-13 of the attached traffic impact study.

The Nixon Farm (North and South) traffic impact study modeled impacts of the new developments on Huron Parkway/Plymouth intersections and seven intersections along Nixon Road: Barclay Way, Dhu Varren, Green, Haverhill, Meade/Bluett, Huron Parkway and Plymouth. The results of the modeling are discussed on starting on Page 33 of the attached traffic impact study.

C-1 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 69 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm North Zoning, 3381 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays)

Question: It is stated that “The Ann Arbor City Planning Commission hereby authorizes activity in the natural features open space for the Nixon Farm North development. Why is that? (Councilmember Kailasapathy)

Response: The Zoning Ordinance requires a 25-foot open space surrounding wetlands and water courses for optimal protection for these two particular types of natural features. Any encroachment into that 25-foot open space is defined as an “activity” by code and requires specific authorization by the Planning Commission. The criteria applied seek to balance the detrimental effects from the disturbance activity and the beneficial effects from the entire development. The Nixon Farm North site plan includes nine areas of activity for grading work related to construction of the dwelling units (no building is within the natural feature open space), retaining walls or detention ponds, the

driveway crossing of the Traver Creek tributary, and a wetland mitigation area immediately adjacent to the existing wetland on the south side of the site.

Question: I also see that staff wants the zoning postponed until site plan it ready. When will that be? (Councilmember Kailasapathy)

Response: At this time, staff is recommending that first reading of the zoning for both Nixon Farm North and South be acted on this evening. Discussions with the Woodbury Club and Nixon Farm petitioners regarding the Nixon/Green/Dhu Varren intersection are progressing, but are ongoing. We anticipate that the issue will be settled prior to second reading of the zoning for Nixon Farm North and South.

Question: In the cover memo for North indicates “208 or more single-family attached dwellings in 51 or more buildings.” For the South (C-2), the “or more” phrase does not appear. Can you please clarify the difference – is there discussion about making the North project larger? (Councilmember Lumm)

Response: Subsequent to Planning Commission action, the petitioner explored potential changes to the unit mix on the North site in response to a comment from a commissioner that the North site should include “carriage house” unit types in addition to townhouse dwelling unit types. These changes would result in a revised unit count. At the time the zoning transmittal was written, Planning staff had not received revised plans, but included the “or more” in case this changed between the writing of the transmittal and the final site plan action.

C-2 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 41 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm South Zoning, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays)

Question: For the Nixon Farms South project, neighbors have expressed concerns about the front setback of 30 feet. Have there been any further discussions with the developer or consideration to increasing that front setback for the South project? Neighbors have also expressed concerns about the balance of the higher and lower density units North and South of Dhu Varren Road and the higher density, South project’s “wall of buildings” along Nixon Road – have further discussions with the developer explored alternative designs for the units fronting Nixon Road South of Dhu Varren? (Councilmember Lumm)

Response: After the initial Planning Commission public hearing on Nixon Farm South, Planning staff discussed with the developer neighborhood concerns about the building frontage along Nixon. However, increasing the front setback for buildings facing Nixon Road would result in shifting the entire development the same number of feet into the natural areas on the west side of the site. The developer did not want to further encroach into the natural areas and opted not to change the layout. For comparison, Planning staff looked at existing developments in the area and found that the proposed setback of 30 feet and building length of 130 feet was similar to other nearby residential

developments. To staff's knowledge, there have been no further discussions about alternative designs.

Question: If these zoning actions pass first reading tonight, when do you anticipate the second reading, site plan and public hearings would occur? (Councilmember Lumm)

Response: Second reading of the zoning would be scheduled for the August 17, 2015 City Council meeting. Action on the Nixon Farm North and South site plans would tentatively be scheduled for the August 17th meeting, unless details regarding the Nixon/Dhu Varren/Green intersection have not been worked out.

DC-2 – Resolution Directing City Administrator to Work with Pittsfield Township to Gain Approval of the Airport Runway Extension

Question: Is there is an increased liability for the city if we do not go forward with the safety improvements or delegate decision making authority to a third party.(Councilmember Warpehoski)

Response: The City Attorney's Office will provide a response.

Question: Do we have a timeline for the EA for the airport project? (Councilmember Warpehoski)

Response: Airport and MDOT-Aeronautics staff are currently working to update the draft environmental assessment (EA) for the airport runway safety improvement project. The update was requested by the Federal Aviation Administration (FAA) and is focused on updating statistical information and reorganizing the document layout. It is anticipated that this work will be completed by the end of August, 2015. The FAA has requested that the updated document be made available for another 30-day public comment period. Based on the comments received during this period, additional effort on the response to comments section of the EA may be necessary. Assuming a normal response to public comment, staff hopes to have the final revised EA document available by the end of 2015.

DC-3 – Resolution to Direct the Ann Arbor Planning Commission to Review and Make Recommendations Regarding the Adoption of a Floodplain Management Overlay Ordinance

Question: Do we have an estimated cost for the community involvement and review of the proposal? If it is to be done in house, what impact will this have on projects already in the workplan? (Councilmember Warpehoski)

Response: Staff and the Planning Commission have not yet developed a community engagement strategy for this ordinance development. Therefore, anticipated costs or impacts cannot be provided at this time.

Question: Is the timeline proposed by CM Eaton (Second reading and adoption in September) reasonable? (Councilmember Warpehoski)

Response: Given the unfinished condition of the current draft ordinance and that the staff process to develop this ordinance has not commenced, this timeframe is not achievable.

Question: If I read the city floodway maps correctly, there are some parcels that are either 100% in the floodway or nearly so (e.g. 422 W. William Street). What would be the impact on these parcels if the ordinance is adopted and the existing building is damaged? Does this affect the legal analysis of if the regulation is a taking? (Councilmember Warpehoski)

Response: According to the current Building Code, if a house in the floodplain is substantially damaged (i.e., beyond 50% of its market value), it would have to be brought into compliance with the flood resistant construction standards. Where the State has jurisdiction, which is about 50% of Ann Arbor's floodway area, the current State law prohibits residential construction in the floodway. The City currently cannot issue permits to replace substantially damaged residential structures, due to this State prohibition. Historic structures are exempt from most of these requirements. Given the unfinished status of the draft ordinance, staff is unable to assess the impact on the remainder of the parcels in the floodway.

The City Attorney's Office will provide comprehensive legal advice regarding the proposed ordinance as part of the ordinance development process.

Question: Does our existing zoning allow for the development of buildings that comply with these regulations? For example, do the residential zoning and historic district standards in the Old West Side allow for an elevated building in the flood fringe as laid out in the proposed ordinance? For example, could the Big City, Small World bakery be rebuilt in a manner compliant with these regulations? (Councilmember Warpehoski)

Response: The intention of the proposed ordinance is to not create conflicts with the existing Building Code and Historic District requirements. Staff has not yet assessed the compatibility or conflicts of a floodplain ordinance with other existing ordinances.

Question: Is adoption of the regulation necessary to enroll in the CRS program? (Councilmember Warpehoski)

Response: No, a community can enroll in the CRS program without an ordinance such as this. However, adoption of higher standards within a local floodplain ordinance could significantly affect the City's rating within the Community Rating System (CRS) in the event that the City is able to enroll in this program.

Joining the Community Rating System (CRS) is a recommendation of the City's 2007 Flood Mitigation Plan. Applying for this program requires a fair amount of documentation and multiple steps through the MDEQ, FEMA, and the ISO. The process can take a minimum of one to two years. In 2009, the process was started. In September, 2009 at the City's request, the MDEQ conducted a required review of the City's flood management activities. In March, 2010 a letter was sent to FEMA expressing the City's interest in entering the CRS. FEMA determined that one building permit had been issued for a house reconstruction on Seventh Street that may have been in violation of their regulations. FEMA will not move forward with a CRS application if a community has any violations; so FEMA put this effort on hold.

To resolve this potential violation, FEMA requested a detailed hydrologic study of the subject property. During this timeframe, the City was working on renovations to West Park that included working through FEMA's extensive map amendment process. The project's floodplain consultant (Spicer) was directed to add the area of the potential violation into the West Park map revision. A *Conditional Letter of Map Revision* for the project area, including the Seventh Street site, was received on July 14, 2011. However, the City could not move on to the final stage of joining the CRS program until the new FEMA County Wide Map flood maps went into effect on April 4, 2012. This particular issue was finally resolved with FEMA in December 2013.

At the City's request, the MDEQ conducted another required review of the City's flood management activities, and FEMA brought up several more potential violations from past developments. Staff were able to address most of them, but documentation for 2 sites remains unresolved.

Once staff is able to resolve the remaining 2 outstanding FEMA questions (timeframe uncertain), the CRS Application will be restarted. It is expected to take one-and-a-half to two years from the restart of the process to become a CRS community. Based on the current floodplain management activities by the City, staff anticipates entering the CRS with a score of 8, which would result in a 10% discount on flood insurance for affected property owners. Adopting the proposed floodplain management overlay ordinance would likely take the City down to a score of 7 (15% discount), and possibly even a score of 6 (20% discount), depending on what higher standards are included in an approved ordinance.

Once again, it is not the lack of a floodplain ordinance that is preventing the City from entering the CRS; rather, it is the lack of specific documentation that FEMA has requested to address potential violations from previous building projects.

Question: Where does the creation of a floodplain ordinance currently stand on the planning commission's work plan? (Councilmember Westphal)

Response: The Planning Commission FY16 work program, adopted on July 7, 2015, includes the Floodplain Ordinance project. The timeline for the project is identified as July 2015 through March 2016, which anticipates that technical evaluation and

refinement of the Dow Fellow's work will be done by staff in Systems Planning and the City Attorney's Office before the draft comes to the Planning Commission for review in late fall. Once transmitted to the Planning Commission, the Ordinance Revisions Committee will review the draft and conduct public engagement before moving it forward to the full Planning Commission for a recommendation to City Council.

Question: Are there reasons, such as changing maps issued by FEMA, to delay this process? (Councilmember Westphal)

Response: In May 2007, the City Planning Commission passed a resolution to direct City staff to draft a floodplain management ordinance, and created a Floodplain subcommittee. At that time FEMA, was in the process of revising the official flood insurance rate maps for Washtenaw County. That process took much longer than FEMA estimated, but was officially completed with new county wide flood insurance rate maps on April 3, 2012. There is no reason from a mapping standpoint to delay the process of drafting and going through the public approval process for a local floodplain management ordinance.

Question: If not already slated for completion by the proposed deadline, what CPC work plan items would need to be delayed in order to reprioritize in favor of a floodplain ordinance? (Councilmember Westphal)

Response: To meet the proposed deadline of reporting to City Council by October 1, the Ordinance Revisions Committee would need to set aside anticipated work on the downtown premiums and ZORO (Zoning Ordinance Reorganization) projects. Planning staff would need to reprioritize work efforts to allow time to evaluate potential land use impacts, particularly on Old West Side historic district properties. Additionally, the impending retirement of the Planning Manager is requiring a reevaluation of the Planning Commission work plan and fulfilling daily Planning requirements. Given that the proposed amendments would significantly impact some private properties, staff recommends conducting a more extensive public engagement process than allowed by the single required public hearing. This engagement would need to be conducted in August in order to inform the consideration of the proposal at the Commission's September 29, 2015 meeting. Staff recommends that instead of a compressed schedule, adequate time be given for a thorough review of the proposed ordinance due to its significant impact and this work be started after completion of priorities that staff is already working on.

DC-4-8 – Election Changes

Question: Does state election law allow for "blanket primaries" in which candidate list partisan affiliation but the top 2 candidates from an August primary face off in November regardless of party affiliation? (Councilmember Warpehoski)

Response: A blanket primary system is not allowed under Michigan law.

DB-2 – Resolution to Approve the Woodbury Club Apartments Planned Project Site Plan and Development Agreement Southeast Corner of Nixon Road and M-14 (CPC Recommendation: Approval – 8 Yeas and 0 Nays)

Question: It is stated that “The project proposes that 86.2% of the site remain in the form of open space.” Please let me know that open spaces means – does it include paved parking lots, drives ways, etc? Or does it mean green spaces alone?
(Councilmember Kailasapathy)

Response: As defined by the zoning ordinance, “usable open space” refers to areas on the site that have either been preserved in a natural state or are landscaped, such as woodlands, wetlands, lawn areas, landscaped islands, and recreational amenities such as playgrounds. Sidewalks are also considered open space. Areas on a site where permanent construction has taken place are not considered “open space”. These areas include rooftops, parking lots, garages/car ports, and driveways. The 86.2% figure applies to the full 54-acre site, which includes a large wetland on the east side of the site.

Question: It is also stated “A development agreement has been prepared to address footing drain disconnects”. How many disconnects? Which areas? Why do we continue to take this approach. Can the developer attempt on-site mitigation?
(Councilmember Kailasapathy)

Response: Application of the June 15, 2015 Council resolution regarding the development offset mitigation program for sanitary sewer impacts resulted in a calculation of 65 footing drain disconnects or equivalent; 72 disconnects were originally required. These disconnects may be completed citywide. It is up to developers which methods they choose to mitigate (remove) flow from the sanitary sewer system, however to date, the most common method chosen by developers is footing drain disconnects. Other alternative methods that have been considered by developers for mitigating flow have been:

- Disconnecting swimming pools (filter backwash discharge) from the sanitary sewer system
- Renovating buildings and replacing old fixtures with low flow fixtures
- Demolishing or disconnecting buildings from the sanitary sewer system

Question: In response to my question on June 15th regarding the City’s potential purchase of 25 acres of parkland, the response indicated that “city staff are awaiting a response from the developer on the City’s most recent offer.” Can you please provide an update on the current status? (Councilmember Lumm)

Response: There is no change in status. Negotiations are continuing.

Question: Also in response to a question June 15th on traffic in the area, staff indicated that while the Nixon/Green/Dhu Varren intersection was identified as a problem, “neither study identified other areas in the vicinity as being in need of modification.” Can you please provide the data from the two traffic studies that support that conclusion? (Councilmember Lumm)

Response: The Woodbury traffic impact study modeled impacts of the new development on four intersections along Nixon Road: Dhu Varren, Green, Bluett and Huron Parkway. The results of the modeling are discussed on Pages 7-13 of the attached traffic impact study.

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DS-1 – DS-7 – Geddes Avenue Project

Question: A significant amount of the cost of this project for adjacent properties is due to sewer connection costs. How many of the affected properties are currently on septic systems? (Councilmember Warpehoski)

Response: There are approximately 22 parcels adjacent to this project that are not currently served by the sanitary sewer system. Of those, 4 parcels are still township parcels, which would not be allowed to connect until payment of improvement charges or until annexation.

Question: Have septic systems in the area had a history of failure? (Councilmember Warpehoski)

Response: Staff does not have any data readily available on the history of septic failures in the area. However, there have been septic failures in the area which have driven previous requests for sanitary sewer extensions.

Question: What are the impacts of failed septic systems? (Councilmember Warpehoski)

Response: When a septic system fails, the County will require a township parcel to connect to the sewer system if it is available.

Question: If we install a new sewer line in this area can we allow residents to continue to use their septic systems until the systems fail? (Councilmember Warpehoski)

Response: For City parcels, City Code {Chapter 28, 2:42.2(7)} requires that parcels be connected to the sanitary sewer system if sewer is available within 200 feet of the parcel.

Question: The memo cites city code regulations and county health department jurisdiction regarding whether properties must connect to the sanitary sewer. Are there other county, state, or federal regulations governing this? (Councilmember Warpehoski)

Response: The County regulates all septic fields, new or rebuilt, and would likely not issue a permit for a septic field at a location where sanitary sewer service is available.

Question: Put another way, would the city be able to change the code so that properties could stay on septic until their septic systems failed? (Councilmember Warpehoski)

Response: City code mirrors the State regulations on connections to sanitary sewers.

Question: The total project is \$9.66M and this construction contract is \$6.92M. Can you please provide the detail on the \$2.74M balance (how much is design, project consulting, etc.)? Could you please provide the contract for Tri-City Groundbreakers, and please be aware that I will be asking a question tonight with respect to the guarantees and protections that are provided affected homeowners. (Councilmember Lumm)

Response: Estimated costs for non-construction contract items on this project are as follows:

\$647,803 - Contract with HRC for engineering design; which also includes the proposed amendment to the contract to perform additional construction engineering services for the project, and construction inspection and surveying on an as-needed basis.

\$199,000 – Public Engagement (approximately \$148,000 for consultant staff; \$51,000 for City staff)

\$131,665 – Construction testing (PSI)

\$1,761,532 – Other project costs, which consist primarily of staff time for project management, public engagement, construction inspection and coordination.

These estimated costs are generally in line with other City project, which typically see ratios of total project cost to construction cost in the range of 1.3 to 1.5.

The construction contract for this project is the standard City construction contract. It is attached to the file in Legistar.

Note: The following questions were from property owners and forwarded by Councilmember Lumm.

Question: If Stormwater Assessments move forward, then where is the assessment (and the responsibility) of the uphill sources of the stormwater run-off? Many of us on Geddes Ave are the recipients of unwanted stormwater run-off. And despite the rather flat nature of our Geddes Ave project property, and the massive amount (nearly an acre, in my case) of pervious ground that handles significant amounts of the run-off, it appears the we are the only property owners tagged with the assessment. This stormwater assessment should be directed at the sources of the run-off. (Councilmember Lumm)

Response: The assessments proposed are all for properties uphill of the project, draining towards the proposed improvements. If a parcel to be assessed is within the township, it is listed under the heading "Future Recoverable".

Question: What role does our current Water bill line item of Stormwater weigh in on this project? Property owners have been paying for years to use and maintain the stormwater management systems....and these funds should be used to maintain and improve these systems. (Councilmember Lumm)

Response: The quarterly stormwater fees are for the operations and maintenance of the stormwater system. The proposed construction of stormwater facilities with the Geddes project are "first time" stormwater improvements. "First time" improvements or initial capital construction paid by operations and maintenance fees are prohibited. This prohibition has been confirmed by the Michigan Supreme Court.

Question: Do any County Drain Easements exist within the Geddes Ave project area? Prior to 1956 these easements were not necessarily recorded on the plat maps, and can be found in the Washtenaw County Water Resources Commissioner's Office. (Councilmember Lumm)

Response: The Washtenaw County Water Resources Commissioner has good records of which drainage courses are county drains.

Question: Does any part of our Property Tax mills for "Wash County Oper" fund the Washtenaw County Water Resources Commissioner's Office and its stormwater operations? (Councilmember Lumm)

Response: When a county drain is constructed or maintained, the expenses are assessed by the Washtenaw County Water Resources Commissioner to the benefiting property owners or jurisdictions. Little or no county operating millage is used for stormwater operations.

DS-8 – Resolution Awarding a Construction Contract to Doan Construction Company for the Colony Road, Essex Road, and Manchester Road Concrete Pavement Repair Project (\$775,600.02); Bid No. ITB-4396)

Question: I understand the RFP was posted on the City’s website and on the State’s website as well, but it is concerning nonetheless that only one bid was received on a contract of this size that’s pretty generic (e.g., doesn’t require any special/unique expertise or skills). How might we potentially increase participation? Do you think participation might increase if we reached out and contacted all firms that we’ve done business with in the past who have demonstrated the capability in similar work? (Councilmember Lumm)

Response: The project was originally put out for bid in mid May, and received only one bid (from Fiore Enterprises, which was \$95,600 over the Engineer’s Estimate). However, a mistake was found in the bid documents, which led to some irregularities with this bid, causing staff to rebid the project. When the project was rebid, several contractors were contacted to encourage more bidders on the contract. This still resulted in only one bid, however the resulting bid was \$98,400 under the Engineer’s Estimate.