

Pentiuk, Couvreur & Kobiljak

Professional Corporation

Attorneys and Counsellors at Law

Website: www.pck-law.com

2915 Biddle Avenue, Suite 200
Wyandotte, Michigan 48192

Telephone (734) 281-7100
Facsimile (734) 281-2524

February 6, 2023

City of Ann Arbor
Attn: Mayor Christopher Taylor
Attn: City Council Members
301 E. Huron Street
Larcom City Hall, 3rd Floor
Ann Arbor, MI 48104

Via first class mail and e-mail to:

ctaylor@a2gov.org

CityCouncil@a2gov.org

**RE: Notice of Opposition to Earhart Road 2023 Project
Earhart Village Homes Association**

Dear Mayor Taylor and City Council Members:

The undersigned represents Earhart Village Homes Association (“EVHA”). EVHA is a 174 unit condominium association located off of Earhart Road and Greenhills Drive. Please be advised that this correspondence serves as EVHA’s written opposition to the proposed placement of the sidewalk on EVHA’s private property and/or along Earhart Road abutting EVHA property, from the southern property border of EVHA northerly to Glazier Way along Earhart Road relative to the Earhart Road 2023 Project (“Project”). This correspondence also serves as EVHA’s request for an opportunity to be heard and be placed on the Agenda at the next Transportation Committee Meeting, Planning Commission Meeting and City Council Meeting to allow for EVHA to place its objections to the Project on the record.

EVHA is vehemently opposed to the proposed sidewalk placement on EVHA’s private property and/or along Earhart Road abutting EVHA property. This written correspondence will detail EVHA’s objections, goals, concerns, issues and questions relative to the Project. EVHA is respectfully requesting that the City by its Mayor, Council Members, City Administrator and its respective Commissions and Departments seriously consider EVHA’s objections and concerns and not place the sidewalk on EVHA property or along Earhart Road abutting EVHA’s property.

Please know that EVHA’s Board of Directors and Co-owners have voiced their concerns over the Project and the placement of the sidewalk since the Project’s public inception. EVHA’s Board of Directors and Co-owners have attended the City of Ann Arbor Community Meetings and Informational Meetings on April 11, 2019, December 1, 2021, October 20, 2022, and December 14, 2022, and have expressed EVHA’s dismay at the placement of the sidewalk on EVHA property. Moreover, EVHA and its Management Agent met with Project Managers Nicholas Bayley and Brian Slizewski to walk EVHA’s property bordering Earhart Road on December 8, 2022, so the Project Managers could see the impact of the City’s flawed design on EVHA’s community. EVHA has also requested via the Project Managers to eliminate the sidewalk on or along EVHA property, yet the Project continues without EVHA’s serious concerns taken into consideration.

The crux of EVHA's opposition is that the construction of a sidewalk whether on EVHA property or abutting next to EVHA's property negatively impacts EVHA's property, greatly reduces the quality of life of EVHA Co-owners, and will cause a serious hazard for EVHA's Co-owners who live behind the sidewalk. The proposed placement of the sidewalk is now to be a mere 3-feet from Earhart Road on EVHA's property, which is not only dangerous, but presents a serious safety concern given how close the sidewalk would be from Earhart Road and directly above a sewer line. All it would take would be one vehicle coming up on the curb and hitting and killing a pedestrian given how close the proposed sidewalk is to Earhart Road. The City cannot allow this dangerous sidewalk to be placed at its proposed location.

Moreover, the placement of the sidewalk on EVHA property would require the removal of thirty (30) plus healthy, mature trees and the existing berm, which would be in direct contradiction to the City's A2 Urban Forest Management Plan and the City's A2 Zero Plan. The removal of the trees would still require the City to build a retaining wall on the inside of the sidewalk to retain soils, which will require ongoing maintenance. The removal of the healthy mature trees will cause root damage to the existing trees, damage to EVHA property and given the retaining wall, it will cause EVHA's existing trees to topple.

EVHA has hired its own ISA Certified Arborist who completed a walkthrough and inspection of EVHA's trees, berm and property along the proposed area for the sidewalk. EVHA's Arborist noted in his inspection that a retaining wall will be required due to the grade in regards to the proposed sidewalk. EVHA's Arborist also listed several concerns relative to the Project and EVHA's trees as listed below:

- ***“Removing large tree roots can make the tree unstable.*** These trees that will remain will be on the east side of the new sidewalk. When a tree grows it establishes its roots based on wind load to protect it from uprooting. So on these trees the west side of the roots would be cut. ***Most of these trees are evergreens which have real shallow root structure so cutting these tree roots would make it unstable and a hazard to the homes behind them.***
- In most cases cutting the roots trees will become unhealthy later on. If large roots are removed, the tree may not be able to get enough nutrients and water. ***This will cause decline or even aesthetic appeal to the front of the community.***
- ***Make these trees stressed out can encourage insect and diseases to the trees. This can cause more dead branches or cause the tree to further decline and die.***
- Timing is important. If you choose to cut or remove tree roots, winter and early spring are the best time of year to do so.” (See Attached Arborist Report).

What is most concerning with EVHA's Arborist's report is that by the City removing EVHA's healthy, mature trees, which have a “real shallow root structure”, the trees would become unstable and a hazard to EVHA's Co-owners who live behind the tree line. The City cannot allow for any of EVHA's trees to be cut down as doing so will jeopardize the safety of the City's electors and their families and the soundness of their homes. Moreover, EVHA has dedicated over 50 years to its Grounds and Landscaping Plan with its investments to wit these trees are a part of and cutting these trees will cause the trees to decline and die, which will negatively affect the aesthetics of the front of EVHA's property for all to see. This will be an eyesore.

The City's proposed placement of the sidewalk on EVHA property is a sidewalk that leads to nowhere. The City is not constructing a sidewalk to the north of EVHA's property between Pinebrae N. and Pinebrae S. or adjacent to Botsford Cemetery, to the south of EVHA. This is because it is logistically impossible to do so. The City's proposed plan for the sidewalk is to construct an incomplete and non-contiguous sidewalk with numerous gaps and waste taxpayers' money doing so.

To the north of EVHA's property is Glacier Hills Senior Living Community ("Glacier Hills"). However, between the boundary lines of EVHA and Glacier Hills, is a Conservation Easement from Glacier Hills to the City affecting 3.37 acres of land, which prohibits structures or improvements being built upon said land. The City would be prevented by its own recorded document to connect a sidewalk. Additionally, there are also numerous utility poles, utility boxes, concrete slabs and underground wires between Glacier Hills and EVHA right outside of the Conservation Easement, which presents another logistical nightmare for the City to construct and/or connect a sidewalk, which will cause a gap. To the south of EVHA is the historic Botsford Cemetery, which presents a serious concern as to connect and construct a sidewalk would be logistically impossible as graves would have to be unearthed. It is logistically impossible to connect the proposed sidewalk to the north and south of EVHA and the proposed sidewalk is thus a sidewalk to nowhere and a waste of taxpayer dollars.

Moreover, EVHA takes great exception to the City's reliance on the 1972 Sanitary Sewer Easement to construct the sidewalk on EVHA's property. The 1972 Sanitary Sewer Easement was specifically granted by EVHA's prior grantor to the City for the construction and maintenance of a sanitary sewer, in, on, and over the described premises. The 1972 Sanitary Sewer Easement includes a 15-foot-wide right-of-way for sanitary sewer subject to the condition that after construction or maintenance activity, the earth disturbed by such activity shall be restored to as like good condition as it was immediately before such activity commenced.

Nowhere in the 1972 Sanitary Sewer Easement does it grant the City the authority to build a sidewalk. Moreover, there are serious concerns relative to the installation of a sidewalk over a sanitary sewer. The City cannot rely upon the 1972 Sanitary Sewer to build the sidewalk as it has no lawful right to do so upon EVHA's property. This is tantamount to an unlawful taking of private property by Eminent Domain for a public purpose without just compensation being paid to EVHA. The City by its unlawful reliance on the 1972 Sanitary Sewer Easement without just compensation being paid to EVHA is in violation of MCL 213.51 *et seq.*

EVHA has set forth the below goals that it wishes for the City to respectfully address and satisfy. In the spirit of a municipality working with its electors as a sign of togetherness, EVHA has proposed an alternative plan for the Project for the City to consider as stated in Goal B below and as further described in greater detail in the attached memorandum. The alternative plan is to focus the Project on the west side of Earhart Road directly across from EVHA where a sidewalk already exists.

The alternative plan is consistent with the City's A2 Urban Forest Management Plan, the City's A2 Zero Plan, and Vision Zero. The City, in past practice has not always placed sidewalks on each side of various City streets. The City could easily alleviate all of the serious inherent issues with

the placement of the sidewalk on or along EVHA property by focusing the Project along the west side of Earhart Road and not place the sidewalk on EVHA property or abutting EVHA property. EVHA's goals for the Project are as follows:

Goal A:

- Eliminate the proposed sidewalk adjacent to or on EVHA property from the Earhart 2023 Project.
- Installation of "No through Truck Traffic" signage for Earhart Road (Always will have sidewalk gaps).
- City to conduct a new traffic study to correctly study current traffic patterns and volume before the Project moves forward as we understand that the last traffic study was completed pre-Covid.

Goal B:

- Move the road design over (west) to eliminate or minimize infringement on EVHA property. Space is available and will eliminate the often-confusing chevron lines. Reduce the bike lane width to 4' or create a shared-use path for both bikes and walkers, eliminating a separate sidewalk. This goal reduces the negative impact to EVHA property and the reduction of the quality of life of EVHA co-owners.
- Installation of "No through Truck Traffic" signage for Earhart Road.

For the reasons stated above and in the attached memorandum detailing EVHA's serious and legitimate concerns relative to the placement of the sidewalk on or along EVHA property, EVHA hereby requests that the City not place the sidewalk on or abutting EVHA property and move forward with the alternative proposed plan along the west corridor of Earhart Road. EVHA has also attached to this written correspondence and attached memorandum a list of questions and issues that EVHA demands be addressed and satisfied. EVHA fully expects a response to this correspondence and attached memorandum, a response to EVHA's goals as noted above, and a response to EVHA's attached list of questions and issues.

Please confirm that EVHA will have an opportunity to address the Transportation Commission, Planning Commission and City Council at the next meeting date by being placed on the Agenda. Please direct all correspondence to the undersigned at rpentiuk@pck-law.com.

Very truly yours,

PENTIUK, COUVREUR & KOBILJAK, P.C.

/s/Randall A. Pentiuik

RANDALL A. PENTIUK

CC – via e-mail only:

Linh Song, City Council Member, lsong@a2gov.org

Chris Watson, City Council Member, cwatson@a2gov.org

Dharma Akmon, City Council Member, dakmon@a2gov.org

Erica Briggs, City Council Member, EBriggs@a2gov.org

Milton Dohoney Jr., City Administrator, mdohoney@a2gov.org
Atleen Kaur, City Attorney, akaur@a2gov.org
Transportation Commission, TransportationCommission@a2gov.org
Molly Kleinman, Chair, Transportation Commission, mkleinman@a2gov.org
Planning Commission, planning@a2gov.org
Brett Lenart, Planning Manager, Planning Commission, blenart@a2gov.org
Wonwoo Lee, Planning Representative, Planning Commission, wlee@a2gov.org
Nicholas Bayley, Project Manager, Planning Commission, nbayley@a2gov.org
Brian Slizewski, Project Manager, Planning Commission, bslizewski@a2gov.org
Engineering Department, engineering@a2gov.org
Missy Stults, Director, Office of Sustainability and Innovations, mstults@a2gov.org
Brian Steglitz, Administrator, Public Services Area, bsteglitz@a2gov.org
Molly Maciejewski, Manager, Public Services Area, mmaciejewski@a2gov.org
Tiffany Giacobazzi, Forestry Public Works/Urban Forest Management Plan, tgiacobassi@2gov.org
Andy LaBarre, Washtenaw County Commissioner, labarrea@washtenaw.org
Rita Ross, EVHA President, rross782@comcast.net
Ralph J. Marcus, Marcus Management, marcusmgt@aol.com

MEMORANDUM OF IMPACT OF THE PROJECT ON EVHA

Impact of Project on EVHA's Trees

First and foremost, per EVHA's Arborist's report, there are real concerns relating to the health of the trees, the safety of EVHA's Co-owners, and the aesthetics to EVHA's property if the City removes EVHA's trees. EVHA's serious and legitimate concerns are repeated in EVHA's opposition letter as stated above. The City cannot jeopardize the health of these healthy, mature trees, the safety of its electors, their families and their homes, or the aesthetic of EVHA's property along a City street for the placement of an unnecessary and non-contiguous sidewalk that leads to nowhere. The impact that the proposed sidewalk has on EVHA is in direct conflict to ALL of the City's goals and plans. The safety of the City's electors and their property, which is the most and vital goal is being overlooked for an unnecessary and non-contiguous sidewalk.

The proposed removal of EVHA's mature trees and berm on EVHA's property along the eastern edge of Earhart Road is inconsistent with the City's A2 Urban Forest Management Plan and the City's A2 Zero Plan. The City removing the undamaged and mature trees along Earhart Road, which is a City Street on EVHA's property is in direct opposition to the City's A2 Urban Forest Management Plan relative to the impact of the City's Urban Forest. Said removal of one single tree impacts the City's Urban Heat Island, Water Quality and flooding and Air Pollution, which impacts the City's A2 Zero Plan.

However, for whatever reason, the City is perfectly fine with removing thirty (30) plus healthy, mature trees and berm from EVHA's property for an incomplete and non-continuous sidewalk that is inconsistent with the City's A2 Urban Forest Management Plan and the City's A2 Zero Plan. The loss of EVHA's healthy, mature trees and berm will negatively impact EVHA in the following ways:

- Create long-term damage to mature trees and plantings
- Interfere with EVHA's 50+ years commitment to its Grounds and Landscaping Plan and investments.
- Decrease Co-owners' property value.
- Diminish EVHA's livable community that supports its Co-owners' physical and mental health
- Increase peak summer temperatures
- Increase air pollution
- Increase noise pollution
- Decrease privacy
- Increase stormwater runoff and pollutants
- Increase Co-owners' energy costs

The proposed sidewalk is unnecessary and will severely damage EVHA's property and seriously affect the lives and safety of EVHA Co-owners who are electors of the City.

The removal of EVHA's healthy, mature trees and berm is also inconsistent with the initiatives set forth by the City's Sustainability and Innovations Office. Said various initiatives further the protection of mature trees and maintaining green space to create livable communities that support

its citizens' physical and mental health. The addition of this unnecessary sidewalk will impact berms and mature plantings that have been reducing stormwater runoff and pollutants for 50 years. The loss of EVHA's healthy, mature trees and berm will also increase noise pollution, peak summer temperatures, carbon dioxide, and homeowner's energy costs while reducing the quality of life for EVHA Co-owners.

The planting of new trees by the City to make up for the unnecessary removal of EVHA's thirty (30) plus healthy, mature trees, will not have the same impact as the trees that the City wants to remove relative to the goal to plant one tree for every tree removed. Removing the trees from the side of a City street along private property does not further the City's goals as stated in the A2 Urban Forest Management Plan. This does not help the City's Urban Canopy and would cause damage to EVHA's property and damage to EVHA's existing trees and berm. Moreover, removing the trees would impact the City's percentages compared to other population sizes.

The removal of the trees and berm also impacts the City's A2 Zero Plan. Strategy 6 of the A2 Zero Plan (Carbon Neutrality) is to "enhance the resilience of our people and our place". Item No. 3 of said strategy is to "preserve and enhance the local tree canopy". Within this action, the City's goal in short is to increase the impact of shade trees as natural cooling mechanism in urban areas.

The action items lists that by 2030, this action strategy for local tree canopy will reach its potential greenhouse gas emissions reductions. However, by the City's own inconsistent and intentional actions by removing EVHA's healthy and mature trees and berm from EVHA's property does not meet this action item. The City by removing EVHA's well grown and mature trees and berm that are already part of the local tree canopy and proposed placement with smaller trees or no trees at all, does not further the City's goals.

The City would be spending taxpayer dollars by removing EVHA's trees and reducing its canopy, while increasing gas and exhaust emissions by using gas powered chain saws to remove the trees and then by eliminating or reducing the trees' ability to absorb carbon dioxide. It will take as noted in said Plan, the duration of the Plan for a single tree to absorb 48 pounds of carbon dioxide. The City's proposed Project is a complete disconnect from the City's goals. The installation of this unnecessary sidewalk is inconsistent with EVHA goals, and the City's A2 Zero goals to support the sustainable and equitable growth, protection and preservation of Ann Arbor's tree canopy, as addressed in the A2 Urban Forest Management Plan.

1972 Sanitary Sewer Easement, Glacier Hills Conservation Easement and Utility Poles

In 1972, EVHA's prior grantor granted the City a 15-foot-wide right-of-way for the construction and maintenance of a sanitary sewer in, on, and over EVHA's property along Earhart Road. The 1972 Sanitary Sewer Easement includes a condition that after construction or maintenance activity, the earth disturbed by such activity shall be restored to as like good condition as it was immediately before such activity commenced. The City does not have the authority to use the 1972 Sanitary Sewer Easement for a purpose not described therein and argue that it has the right to construct a sidewalk on EVHA's property. The City cannot argue that the purpose of the 1972 Sanitary Sewer Easement along with the conditions extends to its use to construct a sidewalk.

Irrespective of the fact that the City cannot rely upon the 1972 Sanitary Sewer Easement, constructing a sidewalk over a sanitary sewer line is a serious concern and a safety hazard. Moreover, because of the placement of the sewer line along EVHA's property abutting Earhart Road, along with the fact that the City's proposed sidewalk would run into gaps on EVHA's northern boundary relative to the existing utility poles, utility boxes, concrete slabs, and underground wires along with the Conservation Easement, it is logistically impossible for the City to construct a contiguous sidewalk. The City cannot rely upon the 1972 Sanitary Sewer to build the sidewalk as it has no lawful right to do so upon EVHA's property. Again, the City's reliance on the Sanitary Sewer Easement for the proposed placement of a sidewalk to wit no purpose exists within the recorded document, is tantamount to an unlawful taking of private property by Eminent Domain for a public purpose without just compensation being paid to EVHA. The City by its unlawful reliance on the 1972 Sanitary Sewer Easement without just compensation being paid to EVHA is in violation of MCL 213.51 *et seq.*

Western Side of Earhart Road Project Focus

Directly across from EVHA on the western side of Earhart Road exists a sidewalk from Geddes Road to Kipling Drive, with ten crosswalks between, which make the existing sidewalk accessible to the eastern side of the road. The existence of that sidewalk and recent improvements in crosswalks, and speed reductions promised by the Earhart Road 2023 Project make another sidewalk unnecessary. EVHA proposes as an alternative to placing the sidewalk on EVHA's property or abutting EVHA's property to use the western ample public right-of-way to implement the Project within the corridor to reduce the severe negative impact to EVHA's property, which would minimize tree damage.

Moving the road design over (west) to eliminate or minimize infringement on EVHA property would still be consistent with the City's Vision Zero goals. This proposed alternative would reduce the overall visual width of Earhart Road, eliminate chevron markings, maintain the canopy and still further Vision Zero, as a narrower vs. wider road visual has been shown to be a factor affecting auto speed. The City has space available and proposed alternative will eliminate the often-confusing chevron lines.

The City can reduce the bike lane width to 4' or create a shared-use path for both bikes and walkers, eliminating a separate sidewalk. This goal reduces the negative impact to EVHA property and the reduction of the quality of life of EVHA Co-owners. The primary engineering goal is to improve safety. EVHA's proposed alternative fosters said goal. The City ought to provide more corridor lighting, more improved crosswalk signage markings, and enhanced lighting or rectangular rapid flashing beacons.

EVHA understands the city's Vision Zero goals to reduce vehicle speeds and minimize the consequences of human errors. However, road diets and lane reductions must be properly designed without harming private property and its inhabitants. Other recent City street reconstruction projects protected street trees and other natural amenities and features. The City has completed projects with constructed sidewalks along one, not both, sides of the street.

The City's proposed placement of the sidewalk on EVHA property or abutting to EVHA property creates sidewalk gaps to the north and south of EVHA. The sidewalk gaps create an incomplete and non-contiguous sidewalk, and will further damage the existing natural infrastructure which does not serve the community's best interests and stated urban forestry plan goals/targets.

EVHA ISSUES AND QUESTIONS

EVHA hereby demands that the City address and satisfy the following issues and questions:

1. The City of Ann Arbor must provide EVHA and its Arborist with a copy of the detailed plans, including drawings and supporting materials. Furthermore, the City must include EVHA in the Design Meetings including the Final Design Meeting, as promised by Brian Slizewski during the October Community Meeting and December Walkthrough.
2. When developed, what landscape screening and buffer requirements for private development were approved for EVHA? Were the existing landscape screening, trees, and berms planted to comply with the City's regulations at the time? If yes, could they be grandfathered? See Chapter 62: Landscape and Screening Ordinance.
3. Why would the City propose a sidewalk that as proposed destroys trees, tree roots, and grounds when it is inconsistent with the overarching goals of its forestry plan?

Reference the "City of Ann Arbor Urban & Community Forest Management Plan":
https://www.a2gov.org/departments/forestry/Documents/UCFMP_FINAL_022515.pdf

Other links: www.a2gov.org/urbanforestry

- a. "Overreaching Goal: Sustainably protect, preserve, maintain and expand Ann Arbor's tree canopy and urban community forest. To provide a sustainable urban and community forest resource, existing tree canopy should be preserved and maintained while also enduring the resource is diverse and resilient to changing pressures, supports local ecosystem health and biodiversity, and is managed for long-term survivability with a mixture of tree ages and species to provide a continuous level of canopy cover over time."
4. Why would the City further reduce the tree canopy of the Earhart corridor after the City significantly reduced the canopy with the Concord Pines development?
5. What are the City's plans for restoring and maintaining the tree canopy in this area, and how does the Earhart Road plan as proposed impact the canopy cover goals for this area? As noted in the City's Urban & Community Forest Management Plan (c.f., pg. 38), "Systems Planning is responsible for the coordination of constructed and natural infrastructure systems."
6. Has Systems Planning reviewed this plan in coordination with Engineering, and how do System Planning's "natural infrastructure systems goals" comply with this plan? Please outline the constructed vs. natural infrastructure gains and losses with two vs. one sidewalk for Earhart Road.
7. In 2019, City staff reported that one characteristic that discouraged the reduction in travel lanes (road diet) was that the Earhart Road and Glazier Way intersection level of service (LOS) would deteriorate to an "E/F." Currently, the LOS is a "D." Why design a road to decrease the LOS? What impact will this proposed reduction in LOS have on the community?
8. What impact will the proposed design have on access to Emergency Services? Will the mini-roundabouts increase the response time for emergency vehicles?

Again, EVHA respectfully requests that the City address and satisfy the above noted issues and concerns. It is EVHA's expectation that the City address and satisfy these issues and concerns expeditiously before the Project moves forward. Please forward your response to EVHA President, Rita Ross at rross782@comcast.net, EVHA Property Manager and Agent, Ralph Marcus at marcusmgt@aol.com, and EVHA corporate counsel, Randall A. Pentiuk at rpentiuk@pck-law.com.

Arborist Report

From: Dan Milliken <dan@arbortreesvc.com>
To: Mmi <marcusmgt@aol.com>; Martha Goll <mgoll@marcusmgt.com>
Sent: Tue, Jan 31, 2023 3:33 pm
Subject: Earhart Village Homes Association

Hi Ralph,

Per your request, I reviewed the site at Earhart Village Homes Association in regards to the proposed sidewalk which will require a retaining wall due to the grade.

Roots stretch far and wide to give our trees a stable foundation. Anytime you cut tree roots, there is never a guarantee that it won't hurt or eventually kill the tree.

My concerns are the following;

- Removing large tree roots can make the tree unstable. These trees that will remain will be on the east side of the new sidewalk. When a tree grows it establish its roots based on wind load to protect it from uprooting. So on these trees the west side of the roots would be cut. Most of these trees are evergreens which have real shallow root structure so cutting these trees roots would make it unstable and a hazard to the homes behind them.
- In most cases cutting the roots trees will become unhealthy later on. If large roots are removed, the tree may not be able to get enough nutrients and water. This will cause decline or even aesthetic appeal to the front of the community.
- Make these trees stressed out can encourage insect and diseases to the trees. This can cause more dead branches or cause the tree to further decline and die.
- Timing is important. If you choose to cut or remove tree roots, winter and early spring are the best time of year to do so.

Pruning roots should be properly done and not just with a piece of machinery. Proper methods should be considered when pruning roots to make sure the tree has a chance for survival. So no one can guarantee that cutting the roots will not eventually kill your tree, though it may not happen immediately.

Daniel Milliken
President
ISA Certified Arborist MI-0752A
Arbor Tree Service Inc.