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August 19, 2020

C. Bradley Kaye, AICP CFM  
City Manager  
City of Midland  
Midland Michigan

Dear Mr. Kaye:

At its meeting on Monday, August 10, 2020, the City Council held a public hearing on Zoning Text Amendment No. 161, the proposal to make amendments to the objective site plan review process including within Article 27.00 of the City of Midland Zoning Ordinance. This public hearing followed the public hearing and subsequent recommendation by the City Planning Commission on June 23. During its meeting on June 23, the Planning Commission unanimously recommended approval of the proposed changes.

Additional information was previously transmitted to City Council within the agenda packets of July 27, 2020 and August 10, 2020. The intention of this letter is to build upon the information that has been previously transmitted. This letter is not intended to cover the entirety of the information that has been discussed and previous questions that have already been answered.

During the August 10, 2020 public hearing, there were a number of questions that were raised from members of City Council and the public as it relates to this proposal; many of these questions were answered by staff following the public hearing. Questions that required further elaboration are explained below.

*What makes the proposed amendments a best practice for a municipality?*

It has been discussed that having site plans approved by the Planning Commission or administratively is a best practice for a municipality, as articulated by the Michigan Economic Development Corporation's Redevelopment Ready Communities (RRC) program. In order to best understand this, the perspective must be from both the community and the developer. Certainly, the RRC program discusses the experience of a developer but the program is also designed to help communities further its own goals.

The goals of a community, when it comes to new development, are established within the City's Master Plan and the Zoning Ordinance. While the Master Plan is a visionary document that establishes a guide to new development, the Zoning Ordinance is the laws that must be followed when new development takes place. The City's current Zoning Ordinance advances the City's current Master Plan in a multitude of ways through its various requirements that are contained within the articles. These requirements include non-use and use standards. Non-use standards include elements like setback distances, landscaping, and building heights. Use standards are established by zoning district and include uses by right and conditional uses.

When a use is permitted by right, this use has been determined to be acceptable in all areas of the subject zoning district. An example of this would be a single-family home within one of the City's Single-

Family Residential zoning districts (RA-1, -2, -3, or -4) or an office use within the OS Office Service zoning district. Uses by right are reviewed under the site plan review procedures. Conditional uses are given special consideration. As mentioned above, Conditional Use Permit (CUP) approvals are not proposed to be changed within the proposed amendments. CUPs would still be given final approval only by City Council.

The current system to develop the City's Master Plan, the Zoning Ordinance, and the site plan review process includes multiple opportunities for public engagement. The proposed amendments to the site plan review process would still include an opportunity for public engagement within this process. This would be done via the public hearing at the Planning Commission level. Public engagement would still happen when consideration is given to the City's Master Plan and any changes to the Zoning Ordinance, including rezoning requests.

From a developer's perspective, the proposed amendments will make the City's site plan process more concise and consistent. While these changes will benefit all developers looking to invest in Midland, small-scale, local and non-profit developers will see the most benefit through the leveling of the playing field. To small-scale developers, a more concise and predictable process will eliminate the perception that Midland can be challenging to new development. For any project, every new challenge is a cost to their project which increases the expenses to build within the city.

The proposed amendments would also simplify the public engagement process for new site plans. While the intent of the current process may be to provide citizens more opportunities to weigh in, the effect can dilute engagement: a citizen who cannot follow the process or be available for multiple meetings may find their interests lost in the process. The current system also exacerbates a problem common to civic engagement. That it privileges a small minority of residents with the time and means to engage a project at multiple steps over the citizens who may only be able to engage a project once.

As proposed, all site plans will still need to meet all of the City's objective criteria. Members of the public will still have the opportunity to engage in the process via a public hearing at the Planning Commission. The Planning Commission will be able to modify site plans following public comment, as allowed within the objective criteria.

The proposed amendments will remove legal mismatch and reduce the City's exposure to risk. As discussed previously, the Michigan Zoning Enabling Act designates site plan approvals to be administrative in nature. Placing an administrative task on the agenda of City Council implies and invites a legislative role instead. This mismatch of expectations creates a situation where the City Council either invites legal action if it rejects a site plan that complies with the City's objective criteria, or it disappoints citizens who expected a more legislative action from City Council.

Staff and City Council attention to systemic, policy-level changes will also improve with the proposed amendments. Currently, staff must dedicate time to individual projects over and over, across each cycle in the review process, and site plans account for a substantial portion of many of the recent the City Council's meetings that have been very lengthy. Much of the discussion within these lengthy deliberations related to legislative considerations that should not have been discussed within the confines of a specific site plan project. Changes to this process will free up staff capacity and City Council attention for proactive, systemic fixes to the issues that currently frustrate the community.

*Have other communities modified their site plan review procedures as part of the Redevelopment Ready Communities program?*

Yes, many other communities have removed their legislative body's review of site plans to place final approval at the Planning Commission or staff level. Examples include City of Swartz Creek, Village of

Cassopolis, Village of Pinckney, City of Oak Park, and City of Charlevoix.

It must be noted, however, that the majority of municipalities across the state already have their Planning Commission or staff approve site plans. Some examples of these cities include Bay City, Saginaw, Mt. Pleasant, Holland, Petoskey, Traverse City, Kalamazoo, Muskegon, Grand Rapids, Grand Haven, Lansing, Battle Creek, Rochester Hills, Jackson, and Novi.

*How would these proposed amendments change the City's review for proposals like the controversial senior housing apartments on Eastman Avenue in 2011?*

The proposed senior housing apartments was a Conditional Use Permit (CUP) proposal, it was not a site plan. CUP reviews, involving subjective criteria in addition to objective criteria, are not proposed to be changed. With the proposed amendments, City Council will still have final reviews on all CUPs.

*How would these proposed amendments change the City's review for proposals like the controversial rezoning request at 4710 Eastman Avenue in 2013?*

The proposed rezoning that was adjacent to Burrell Court was not a site plan. Rezoning, or Zoning Map Amendment requests as they are formally known, are not proposed to change with these amendments. City Council will still have final reviews on all rezoning petitions.

*What would the appeal process be for a site plan under the proposed amendments?*

Because the site plan process is defined as an administrative task by the Michigan Enabling Act, the City Zoning Board of Appeals is the only entity authorized by the Act to hear appeals after a final decision has been made. An appeal to the ZBA may be taken by a person aggrieved by an administrative decision. To be an aggrieved person, one must allege and prove that he or she has suffered some special damages not common to other property owners similarly situated (*Joseph v. Grand Blanc Twp.*, 5 Mich. App. 566 (1967)). If not an aggrieved person, the City Council can appeal a decision made by its own staff or Planning Commission to the ZBA.

It has been asked if certain criteria could be established that would allow the Planning Commission to approve site plans under specific conditions with all other site plans requiring City Council approval. Such a process has been conceptually explored by staff and many concerns have been identified in how such criteria would be established. If the criteria would include public opposition, one concern would be in defining what constitutes public opposition.

Ultimately, the objective of these amendments is to make the City's site plan process more clear, concise and efficient. Introducing an additional set of criteria that would divide out Planning Commission approvals versus City Council approvals would make the process more complex.

*How often does the City update its Master Plan or its Zoning Ordinance?*

The City's Master Plan was most recently updated in 2018. The Michigan Planning Enabling Act requires cities to review their plans every five (5) years. The City reviews and updates its plan every 2-3 years. The Zoning Ordinance was most recently updated in April of this year when Zoning Petition No. 630 was approved. Both documents are considered up to date at this time.

*How can members of the public learn about the City's objective criteria for site plans so that they can appropriately comment?*

The City's objective criteria for site plans are outlined within Article 27.00 of the Zoning Ordinance. Article 27.00 references the Zoning Ordinance itself as well as other applicable rules and regulations that apply. An example of a regulation that is outside the Zoning Ordinance is the City's stormwater management ordinance which is found within the Code of Ordinances. Both the Zoning Ordinance and the Code of Ordinances in their entirety are found online on the City's website.

Part of the review process for the Redevelopment Ready Communities program was ensuring that all applicable regulations for new development were publicly available online. While much of this information has been online for many years, since 2014, staff has ensured that all of the applicable information is readily available and up to date.

*Will the proposed changes remove the public's ability to comment on proposed site plans?*

No. Site plans that will go in front of the Planning Commission will still include a public hearing. The Planning Commission will take comments in support and opposition of these site plans just like they do today. If members of the public comment on issues of non-compliance with the objective criteria, the Planning Commission will be responsible for ensuring the applicant complies.

The Planning Commission's rules of procedure require action on a site plan to be at the next meeting following the public hearing. If there are concerns with the site plan following the public hearing, these rules will allow for time for the applicant to address the concerns. If there are no concerns, the Planning Commission can vote to waive the rules of procedure and act on the site plan that same evening.

*Summary of public comments received on the proposed amendments:*

To date, the City has received thirteen (13) individual comments and one (1) petition in opposition of the proposed amendments. Two (2) comments in support of the proposed amendments have also been received. All written comments received are enclosed.

A resolution to approve Zoning Text Amendment No. 161 is enclosed for City Council consideration.

Sincerely,



Grant Murschel  
Director of Planning & Community Development

GRM/rmg