

From Alice Dreger

It appears that the apartments in the “Landmark” building (Grand River Avenue building of Center City) are not being built according to the approved site plan.

**How this came to my attention:**

Recently, the Landmark construction site has been fronted with a banner advertising the apartments for rental in Fall 2019, so I asked one of our government reporters, Andrew Graham, to call the number and get the rental prices for our readers, as readers have previously asked us what they will rent for. (I also asked him to find out the rental prices on the 55+ apartments and retail space on Albert.)

To prepare background for that report, I checked in by email with City planning staff to ask how many of each apartment type there would be, so that we could also report that as part of the same, short “Ask Eli” report.

City staff member Tom Fehrenbach wrote back with information that surprised me, because it named 3-bedroom units in the tally, and I did not recall there being 3-bedroom units in this building’s plans. So, I went back and looked at the site plan information from the time of Council’s approval and found the numbers do not seem to match what was reported to us by Tom. In a follow-up email, Tom explained that his numbers came from “the building plans.”

The following table shows what appears to have been in the site plan City Council approved on June 20, 2017 (second column) and what is being built according to Tom’s read of the building plans:

	Approved site plan <sup>1</sup>	Being constructed <sup>2</sup>	Difference
Efficiencies (number of units)	61	81	+20
1-bedroom (number units)	60	31	-29
2-bedroom (number units)	150	131	-19
3-bedroom (number units)	0	30	+30
Total number units	271 (notes below)	273	+2
Total number “beds”	421	464	+43

<sup>1</sup> The second column, “approved site plan,” uses as its source what was in Council’s packet for approval on June 20, 2017:

[http://eastlansing.granicus.com/GeneratedAgendaViewer.php?view\\_id=2&clip\\_id=829](http://eastlansing.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=829). There is a site plan and SUP memo in that packet that just gives the total of 271 and then 273, as explained below:

[http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51687](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51687). The only staff report included in that packet breaks down what the 271 were, as shown in column 2:

[http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51689](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51689) and the referral letter from Planning Commission gives that same breakdown, shown in column 2:

[http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51688](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51688)

<sup>2</sup> Fehrenbach to Dreger, email July 19, 2018, and follow-up on July 20, 2018.

In trying to understand what happened here, I've researched the following questions, which either were my own or were from one of the reporting team members:

**Is City staff supposed to make sure what is being built matches what was approved in the site plan?**

Yes. According to East Lansing's zoning code:

"When the city engineer has approved the final site plan, the planning and zoning official shall determine if the final site plan continues to comply with the city council approval, and if so, shall forward certified copies of the final site plan to the building official and the city engineer. If the final site plan does not comply with the city council approval, the final site plan shall be processed in accordance with the provisions governing modifications as specified in subsection (k) of this section." (That is quoted below.)<sup>3</sup>

**Is it possible staff simply approved this change?**

Probably not. According to East Lansing's zoning code, a change of the type shown from column 2 to 3 cannot be administratively approved by staff:

"The planning and zoning official may administratively approve applications to modify previous approved site plans, or to expand or convert the use of buildings or site improvements which legally existed prior to the adoption of this section, which meet all of the following standards: ...[(1), (2), (3)]... (4) The modification would not increase by more than five percent ... the total residential occupancy...[(5), (6).]"<sup>4</sup>

In this case, the change in total occupancy for beds is 10.2%. So, it seems staff probably didn't approve this change.

**Has an application to modify the site plan come forward on this at all since Council's approval of the site plan on June 20, 2017?**

Not that I know of. I went back through the timeline I've kept<sup>5</sup> as well as the City's timeline<sup>6</sup>, and both accord with my memory that there has been no application for modification of the site plan.

**Would this change require reconsideration by Council?**

---

<sup>3</sup> Zoning Code (Chapter 50), Article II (Administration and Enforcement), Division 1 (Generally), Sec. 50-36 (Site plan approval), subsection i (granting of permits) item 2.

<sup>4</sup> Zoning Code (Chapter 50), Article II (Administration and Enforcement), Division 1 (Generally), Sec. 50-36 (Site plan approval), subsection k (modifications of approved site plans...), item 4.

<sup>5</sup> See <https://eastlansinginfo.org/content/centercity>.

<sup>6</sup> See <https://www.cityofeastlansing.com/1789/Center-City-District>.

As noted above, an occupancy change exceeding 5% cannot be administratively approved. The same section says that if this is the case, this is the procedure:

“An application to modify an approved site plan or to expand or convert the use of an existing building which does not meet the standards above may be referred to the city council for consideration if the modifications would not result in a significant change to the site plan and would otherwise be recommended for approval by the planning and zoning official. An application to modify an approved site plan that is not administratively approved or referred to the city council pursuant to this section shall be treated as a new application and must be approved in accordance with the procedures and standards of this section and section 50-38. In determining if an application to modify an approved site plan or to expand or convert the use of an existing building meets the standards above, the planning and zoning official may consult with other departments or agencies or seek guidance from the planning commission or city council.”<sup>7</sup>

So, this means this issue has to now go to City Council or start all over as a modified site plan.

While it might be the case that City Council will say they can simply approve this change, doing so would seem to set a pretty significant precedent that other developers could use to make large changes after site plan approval. After all, this change includes the addition of 30 3-bedroom apartments where there had been none.

### **What did Council approve in the site plan on June 20, 2017, with regard to the apartment units in the building now called The Landmark?**

On June 20, 2017, Council approved the site plan, SUPs, Brownfield agreement, and the Master Development Agreement. Before we get into what was presented and voted on there in terms of the site plan, it is important to remember that this project was being put through on a rush basis. That’s important because it helps explain how things may have been in flux and may have been missed. To make things even more challenging, the Planning Department staff was in the middle of absorbing new personnel who were having to quickly learn a lot and deal with a lot of unfamiliar projects.

About a month before Council made its decisions, on April 26, 2017, Planning Commission voted 4-4 (with Dan Bollman recusing/abstaining) on the recommendation to approve.<sup>8</sup>

The project had been scheduled for public hearings at Council for May 8, 2017. But the night before, at a pizza event, the developer suddenly announced they weren’t ready.<sup>9</sup> Council held the public hearings as scheduled anyway, on May 9. The developer made no presentation at this meeting.<sup>10</sup> City Council rescheduled the decision-making meeting to June 13. Again, this was postponed, this time without explanation.<sup>11</sup> Finally, on June 20, another round of public hearings were held, and Council approved the site plan, SUPs, Brownfield TIF, and an incomplete Master Development Agreement.

---

<sup>7</sup> Zoning Code (Chapter 50), Article II (Administration and Enforcement), Division 1 (Generally), Sec. 50-36 (Site plan approval), subsection k (modifications of approved site plans...).

<sup>8</sup> For the agenda packet with attachments of the April 26, 2017, Planning Commission meeting, see [http://eastlansing.granicus.com/GeneratedAgendaViewer.php?view\\_id=2&clip\\_id=799](http://eastlansing.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=799).

<sup>9</sup> See <https://eastlansinginfo.org/content/center-city-developer-not-ready-public-hearing>.

<sup>10</sup> See <https://eastlansinginfo.org/content/council-split-views-center-city-proposal>.

<sup>11</sup> See <https://eastlansinginfo.org/content/center-city-district-hearings-postponed-without-explanation>.

When the application was formally considered by Council on June 20, Director of Planning Tim Dempsey told Council details of the engineering and the site plan were still being worked out. Nevertheless, Council elected to vote on that day, and staff did not stop them from doing so.

At the June 20 meeting, the vote was on what had come to Planning Commission with a few changes, most notably to the design of the 55+ apartments in the other building. There was no mention in any of the staff communications or the presentations of having upped the occupancy and adding 3-bedroom units to the market-rate rental building (now called The Landmark). Here's what was in that packet and what the tape shows:

- The agenda item for the site plan lists 271 units, as shown in column 2 of the table above.
- The videotape of the approval meeting shows Tim Dempsey, Director of Planning, telling Council in the project summary that there were to be "273 units," including "a mix of micros, studios, 1-bedrooms, and 2-bedrooms."<sup>12</sup> That he used the number 273 is curious and suggests the plan may have been in flux. He made no mention of 3-bedroom units or of an increased occupancy.
- Dempsey's letter to City Manager George Lahanas, dated June 20, 2017, and included in the agenda packet used the figure of 271 apartments on the first page in the discussion of Planning Commission's deliberations, and then the figure of 273 apartments on the second page in stating the motion that Council should use. The memo did not break down the unit configuration.<sup>13</sup> Again, this suggests the project was in flux, but nothing in this letter indicated a change of the unit breakdown or a change in the total occupancy expected.
- It appears that the only breakdown of units in the agenda packet came with the staff report from April 21, which had gone to Planning Commission and which showed the 271 units with the breakdown shown in column 2 above.
- The floor plans attached to the June 20 Council agenda marked "Center City: Floor Plans" appear to show on page 4 some 2-bedroom units that have a total of three beds (two in one bedroom).<sup>14</sup> I do not see 3-bedroom units on those plans, and this appears to be the same floor plans that Planning Commission used when it voted on April 21.<sup>15</sup>

Thus, I think it is safe to say if that if the unit configuration had changed to include 30 3-bedroom apartments where there were none before, and the occupancy rate had increased by 43, this was not at all clear. I think it could not reasonably be said that this is what Council voted through, because the floor plans didn't show it, the staff report didn't show it, and staff and the developer mentioned it not at all.

### **Did the Master Development Agreement refer to the unit breakdown or total occupancy for the building now called The Landmark?**

---

<sup>12</sup> Recording is at [http://eastlansing.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=829&meta\\_id=51685](http://eastlansing.granicus.com/MediaPlayer.php?view_id=2&clip_id=829&meta_id=51685) and Dempsey's remark on this is at about 1:18 on the timer.

<sup>13</sup> See [http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51687](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51687).

<sup>14</sup> See [http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51698](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51698).

<sup>15</sup> See page 4 of

[http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=799&meta\\_id=49387](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=799&meta_id=49387).

No, it did not. It also did not refer to the site plan per se (that is, it did not specify the information that would be considered specific to a site plan).<sup>16</sup> It did eventually (in late October) refer to design drawings filed with the City. This takes some special unpacking:

Recall that the Master Development Agreement (MDA) was nowhere near complete when Council voted to approve it on June 20, 2018. It was missing key “exhibits,” including major portions of the agreement. Council voted anyway to approve the MDA.

Much later, the exhibits were added to the MDA. The MDA did not at that point come back to Council. The Mayor simply signed on behalf of the City four months after the June 20 meeting. When the Mayor did sign the MDA, on October 31, 2017, the designs were referred to as constituting the following exhibit:

"Exhibits C-1 and C-2 containing general design plans for Buildings A1, A2, B1 and B3 have been prepared and provided to the City of East Lansing. These Exhibits are on file in the Planning, Building and Development Department, and are identified as BKV Group Project No. 2123.02, with dates of 7/28/2017 for Exhibit C-1 and 7/31/2017 for Exhibit C-2."

So even then, the “design plans” were not included in the MDA, but were housed at the city.

#### **What does that “general design plan” dated 7/28/2017 show?**

I don’t know. I went to the building department on Friday, July 20, 2018, and staff could not immediately find those plans. On Monday morning, July 23, I put in a FOIA request for copies of the following:

*1. What is referred to in the Master Development Agreement for the Center City District project as "Exhibit C," to wit: "Exhibits C-1 and C-2 containing general design plans for Buildings A1, A2, B1 and B3 have been prepared and provided to the City of East Lansing. These Exhibits are on file in the Planning, Building and Development Department, and are identified as BKV Group Project No. 2123.02, with dates of 7/28/2017 for Exhibit C-1 and 7/31/2017 for Exhibit C-2."*

*2. For the same documents as referred to in item (1) above, documents showing the certification as described in East Lansing’s code, Sec. 50-36, subsection i-2, to wit: "When the city engineer has approved the final site plan, the planning and zoning official shall determine if the final site plan continues to comply with the city council approval, and if so, shall forward certified copies of the final site plan to the building official and the city engineer." I am specifically looking to ascertain who made the certification of the items named above and on what date(s), if those documents were so certified.*

I expect it will take at least a few days to get a response.

---

<sup>16</sup> For the Master Development Agreement considered at Council on June 20, 2017, see [http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=829&meta\\_id=51723](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=829&meta_id=51723).

**Did the developers know they did not have legal approval for 30 3-bedroom units and a total occupancy of 464?**

I don't have evidence of what they knew of East Lansing's zoning law and what staff did or did not tell them. Seeing the design plans marked 7/28/2017 may help illuminate these points.

**Does staff know of the apparent discrepancy now?**

When I was at the building department on Friday, I showed the grid above to David Haywood in order to explain why I was looking for the design plans referred to in the MDA. His reading of the grid was that if there was that occupancy change, it could not be administratively approved by staff. I told him I would send him where I was getting my numbers, and did so immediately afterwards. I have not yet heard back from him.

**Is it possible that the mayor had the legal authority to approve an altered site plan when he signed the Master Development Agreement?**

I don't know whether legally the mayor could, in theory, be given this power by Council. But in reality, it doesn't look like Council gave him anything like that kind of power.

The motion made and voted on in Council's action approving the MDA turns out to have been limited to what had been shown to them in the MDA at that point. It was not a motion that would have empowered the mayor to authorize site plan changes on behalf of the Council.

At the June 20, 2017, meeting, Council discussed at length the MDA. At that point, the MDA was still missing most of the exhibits, although drafts of the ground lease and parking agreements were presented, and Council did discuss and a memo that laid out "key terms" of the deal. The motion on approving the MDA, made by Council Member Ruth Beier, was this:

"I move approval of the East Lansing Center City Master Development Agreement dated 6-20-2017 in our packet."<sup>17</sup>

So, the motion gave the mayor the authority to sign what was "in our packet."

Just to be clear, about 200 pages of agreements and attachments were formally added to the MDA between the time Council voted on June 20 and the Mayor signed on October 31, so there were significant amounts of material never formally reviewed or voted on by Council, and never brought to a public hearing. This included very important agreements such as the commercial condominium agreement.

In fact, as noted above, the "design plans" (Exhibit C) were never actually included in the MDA PDF package at *any* point – they are housed at the city and have never been made available as part of the

---

<sup>17</sup> The tape is at [http://eastlansing.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=829&meta\\_id=51720](http://eastlansing.granicus.com/MediaPlayer.php?view_id=2&clip_id=829&meta_id=51720) and the motion by Beier appears at about 3:40.

publicly-released MDA. Did the mayor review Exhibit C before he signed the MDA, and if so, did he see the changes from what Council had approved? We don't know.

In short, on June 20, what Council voted to do was to approve "the East Lansing Center City Master Development Agreement dated 6-20-2017 in our packet" (emphasis added). That packet did not contain most of the exhibits, and it most certainly did not contain design plans that would be dated over a month after Council voted (Exhibit C). So, I don't believe we can say that City Council authorized the mayor to approve design changes on behalf of the Council.

### **Didn't the MDA come back later for votes at Council?**

Yes. On October 10, a few weeks before the Mayor signed the MDA with the attachments (on October 31), Council was asked to vote on a series of key agreements that were being added to the Center City District deal in order to satisfy what the major lender was requiring of the developers. These included parking lease agreements and an estoppel agreement designed to protect the lender's security in the project. But Council approved the amendments, not the MDA itself, based on the motions made and recorded.<sup>18</sup>

That Council was seen as having to vote on these lender-required agreements suggests that there was no belief that the Mayor alone could approve significant changes to the deal, at least not in the eyes of the lender. At that meeting on October 10, there was again no review of what had been added to the MDA, and there was no motion by Council to authorize the Mayor to approve it all on behalf of Council. Council only voted on the new agreements required by the lender.

On October 31, 2017, the Mayor formally signed the MDA. In November, ELI examined more closely what was in the MDA and reported that key parts of it were wrong. The construction parking agreement portion of the MDA was wrong because it required someone who was not a party to the agreement (Christman Company) to pay the City at least \$350,000 for parking during construction. We also reported problems with the guarantee on the senior housing being built.<sup>19</sup>

That month, November 2017, we also reported that the City had allowed demotion of Lot 1 to happen without the expected performance guarantees from the developer, and we reported throughout this period that the developer was struggling to obtain the performance guarantees required by the MDA.

On December 5, Council voted a resolution to amend the MDA. The MDA addendum ("First Addendum to Master Development Agreement") approved in the resolution fixed the problem with the construction parking payment, fixed the problem with penalties for not building the senior housing, and also gave the developer an alternative way to deal with the performance guarantees (namely via the special bond approach).<sup>20</sup>

---

<sup>18</sup> See the synopsis at

[http://eastlansing.granicus.com/DocumentViewer.php?file=eastlansing\\_1cadf84b106c1bbac13e37bda8091648.pdf&view=1](http://eastlansing.granicus.com/DocumentViewer.php?file=eastlansing_1cadf84b106c1bbac13e37bda8091648.pdf&view=1).

<sup>19</sup> See <https://eastlansinginfo.org/content/proposed-new-deal-center-city-released-confirming-elis-reporting>.

<sup>20</sup> See [http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=905&meta\\_id=56422](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=905&meta_id=56422).

But at that meeting, Council approved the Addendum only, not the new items that had been added to the MDA since June 20. There was absolutely no discussion of changes to the site plan since the June 20 approval.

Therefore, I think it is fair to say Council never authorized the Mayor to approve any deal-altering “exhibits” that were attached after June 20, including potentially site plan changes. Even if it was theoretically possible for Council to authorize the mayor alone to approve an amendment to a site plan, they never voted on such an authorization in this case.

**Conclusions:**

1. What is being constructed at The Landmark in terms of the apartments, if staff’s report to me last week is correct, is not in accordance with the site plan that was approved. This includes the addition of 30 3-bedroom apartments where there had been none, and an occupancy increase of over 10%.
2. What is being built cannot be administratively approved by staff and must at least go back to City Council.
3. If Council does allow this change without a formal application for a modified site plan, it could set a troubling precedent, opening the door to future mischief by developers.