

These are East Lansing resident's **Alice Dreger's notes on the East Lansing City Council meeting of September 4, 2012**, based on sitting at the Council meeting and listening. I provide these as a service to the public because the synopsis and minutes provided by the City do not allow residents to know enough about what actually transpires at Council meetings. Anything shown in quotation marks IS exactly transcribed. **Anything not in quotation marks is not to be taken as a quotation.** Items not in quotations are my notes, typed as I listened with typos cleaned up afterwards. If you wish to quote anyone named here, and the item is not in quotation marks, check the tape for the exact quote. (For a tape of the meeting, contact the City of East Lansing.)

**Diane Goddeeris absent.** All others present (Triplett, Beard, Loomis; Power resigned prior to this meeting).

**Agenda approved** with amendment new item #24, approval of Don Davis to the Planning Commission.

**Minutes from August 8, 2012, approved.**

**Written communications received by council** acknowledged (see Council records).

**Citizen communications:**

Alice Dreger announced the starting of eastlansinginfo.org. She said she would explain at a later date the impetus for starting it. The twitter account is @eastlansinginfo.

**Councilmember reports:**

Loomis asked whether there had been a quarterly meeting with MSU. Triplett said there had been. Loomis said he got no notification of it, no agenda. Lahanas said it was in July and he thought the agenda was sent to Council. He said he would send Loomis the materials.

Beard had nothing to report.

Triplett reviewed process, previously announced, about plan to replace Don Power on Council. Applications due Friday. Interviews will be public and will be televised. See City website for details.

**Acknowledgment that during the meeting of August 21, 2012 (work session), Council took the following actions:**

- Approved the minutes of the July 24, 2012 work session.
- Approved a ten month renewal of the City's Workers Compensation Excess Insurance policy with Midwest Employers Casualty Company at a rate of

\$27,445 and authorized City Manager to sign necessary documents by September 1, 2012.

- Approved resolution amending header language for East Lansing Public Library millage ballot question.
- Approved Fine Park improvements contract award. · Approved resolution to adopt amended Brownfield Plan #16 for the City of East Lansing, approving tax increment financing for the Interstate Partners Project
- Approved parking agreement for A & G Partnership project.
- Approved parking agreement between St. Anne, LLC and the City of East Lansing.
- Appointed Richard Ballard to the Hometown Housing Partnership, Inc. to an At- Large position for a partial term ending June 30, 2014.
- Authorized City Manager to sign quit-claim deed for resale of 1321 Wolf Court as provided for in Buy-Sell Agreement between Hometown Housing Partnership and the City of East Lansing.

**City manager's report:**

Lahanas: Community information: City seeking to put out Request for Proposals (RFP) for City Center II properties owned by City or DDA. Citizen meetings with city staff this Thursday at 7 pm and Friday at 9 am, both at the Hannah Community Center.

**City attorney's report:**

Yeadon: no report.

**Public hearing on University Reformed Church rezoning:**

“Consideration of Ordinance No. 1281; an application from University Reformed Church to rezone the property at 841 Timberlane Street, from C, Community Facilities, and R-1, Low Density Single-Family Residential, to RM- 14, Low Density Multiple-Family Residential District, subject to a conditional rezoning agreement, limiting the use of the property to religious use, while allowing for phasing out of the existing educational use.”

Darcy Schmitt: Introduced to council on May 31, 2012. Went through Planning Commission and had input from residents around property. Applicants submitted conditions willing to have on the property if rezoned. One was that it would only be used for religious use and not residential. Also when it was no longer used for religious use, would revert back to single-family district. Also another restriction, now used by ELPS and MSU; these would be considered existing non-conforming uses, and application would phase out those uses so church could continue to grow as it needs to. So this would allow growth of the church.

Beard: Anticipating when it is no longer used as a church, what will have to happen by city or property owner to reverse it to R-1?

Darcy: When no longer used for religious purposes, they would come to the city and the city would rezone it. That would happen by applicant coming to the city and saying it is no longer used for religious purposes.

Beard: Filed with the deed?

Darcy: Would be filed with the county, signed by city and property owner and registered with the county to go along with the property.

Beard: So future owners would be restricted?

Darcy: Yes.

Beard: Do you know what the church wants to do with the property? What they expect to do?

Darcy: Yes, right now it has nonconforming parking. Changes in the future would require update parking situation. This would require a lot of landscaping and additional parking. This would under another use code be over the allowed ground coverage. Our ground coverage in single family districts don't have allowances for this kind of parking or for classrooms.

Beard: Same issue that Vineyard Church ran into?

Darcy: Yes.

Beard: Are they at max lot coverage now?

Darcy: No, not in RM-14. But near max in a single family residential use.

Loomis: Why RM-14? I surmise that this is about the setbacks?

Darcy: More to do with the ground coverage. They met current setback requirement. They have a lot of property, in conservation easement. This would allow minimal additions and improvements.

Loomis: So RM-14 gets us there out of all possible zoning?

Darcy: Yes.

Loomis: I don't see narrative that supports that. I thought maybe I hadn't done my homework.

Darcy: Strictly ground coverage requirement. This is a church with parking needs. Most churches were built prior to these reductions to ground coverages, so many would likely have to get these kinds of zoning updates to expand.

Loomis: We have a pretty expansive and wordy conditional rezoning ordinance now. I didn't see anything in here that traced – I see reason for conditional rezoning, but I don't see anything here that traced this to the conditional rezoning. Is this in compliance with all those now?

Darcy: Yes. This will also be reviewed again by the city attorney to make sure all the dates and everything is filled in appropriately.

Triplett called for public comment.

Bethany Erlich, 2001 North ? in Lansing, representative for University Reformed Church. Myself and Bob Smith are here to answer questions.

No other public comments.

Loomis moved approval as presented, Beard seconded.

Beard spoke to why he would vote for it – that it works for the neighborhood and for the church. A good example of conditional rezoning where it seems to be win-win. Applicant gets what they want for indefinite period of time but does not retain the privilege of redeveloping under higher zoning.

Triplett echoed Beard. There's been a lot of angst over conditional rezoning. This is a good example of how that development tool can be used to create a win-win. The staff's report was good but Loomis is right to ask how this is traced back to conditional rezoning to explain how it goes back to that.

Loomis, Beard, and Triplett voted in favor. (None against.)

### **Public hearing (#2) on University Reformed Church:**

“Consideration of an application from University Reformed Church for Special Use Permit approval for the property at 841 Timberlane Street. The proposed application would allow the church to occupy the existing building on the site (the former East Lansing Public Schools administration building).”

Triplett opened public hearing. There were no public comments.

Beard moved approval. Triplett seconded, I think, but I missed that. All (Loomis, Beard, Triplett) voted in favor.

### **Consent agenda:**

Presented by Lahanas:

- Approval of the appointment of Mary Haskell as officer delegate to annual meeting of Municipal Employees' Retirement System (MERS) on October 3-5, 2012.
- Approval of a FY13 budget amendment in the amount of \$25,450, to both the Parks and Recreation Fund and the Capital Improvement Projects-Parks Fund to assist in financing the Fine Park Improvement Contract awarded by council at the August 21, 2012 meeting.
- Approval to authorize the City Manager to transfer \$4,601 from the Active Living for Adults (ALFA) Memorial Donations Account to the ALFA Foundation, a 501c3 organization.
- Approval of a resolution declaring September 17-23, 2012 Constitution Week.
- Approval of a street closure request for the corner Lantern Hill Drive and Cedarhill Drive on October 6, 2012 from 11:00 a.m. – 6:00 p.m. for a block party.
- Approval of a street closure request for Evergreen Avenue between Northlawn Street and Centerlawn Avenue on September 8, 2012 from 3:30 p.m. – 8:30 p.m. for a block party.
- Approval of street closures to accommodate the Capital City River Run (CCRR) half marathon on Sunday, September, 16, 2012.
- Approval of street closures to accommodate the East Lansing High School Homecoming parade on Friday, October 5, 2012.
- Approval of street closures to accommodate the MSU Homecoming parade on Friday, October 12, 2012.
- Introduce and set a public hearing for October 2, 2012 for an application from Spartan Technology Development for modified Special Use Permit approval for the property at 2000 Merritt Road. The proposed application would allow a portion of the existing office space on the property to be converted to allow a tasting room and retail sales of products produced by biomanufacturing and distilling on the property. The property is zoned OIP, Office Industrial Park District.
- Set a public hearing for October 2, 2012 for Ordinance No. 1274, an application from DTN Management, to rezone the property at 316 Gunson, 400 Gunson, and 1130 Beech from RM-14, Low Density Multiple-Family Residential, to RM-54, University Oriented Multiple-Family Residential.
- Approval to authorize City Manager to execute a contract with the low bidder Harmon Sign, Inc. for the East Lansing Wayfinding Signage Project in the amount of \$65,000 for providing and installing new wayfinding signs in the downtown and also authorize the City Manager to execute any necessary change orders up to \$10,000 above the contract price as required to complete the project.

Loomis: I won't ask that this will be removed, but the item on Spartan Technology tasting room, I want that on a work session. This was not what we saw as original approval application and this is zoned in industrial, not retail sales, and this seems to be moving towards retail sales. So I want this on a work session

discussion. Also item on DTN application on Gunson rezoning, this also needs to go to a work session.

Triplett asked that those move to work session. Lahanas said they would be.

Motion to approve consent agenda from Beard, second from Loomis, all (Loomis, Triplett, Beard) voted in favor.

### **St. Anne Lofts Report:**

Triplett noted vote on July 24 to require weekly reports. He made the claim that weekly reports had been provided. [To my knowledge, this is not true. I have asked for them, and nothing has been produced, and Loomis has told me they have not been getting weekly reports, but I will FOIA the reports so we can see if they exist.] Noted that more information was presented in today's council packet.

Tim Dempsey, head of Planning: Included in packet is memo from me, first one is temporary Certificate of Occupancy (CO) and remaining items, relatively minor, that need to be addressed. Deadline of next Friday based on the date of that letter. Included also information from the Design Professional in Charge according to Michigan Building Code [he is referring to the August letter from Russell Peabody of The Peabody Group] so that rounds out the information in the packet. The temporary CO was issued for floors 2-4 for residential portions, does not include occupancy of 5<sup>th</sup> floor nor 1<sup>st</sup> floor commercial nor 2<sup>nd</sup> floor commercial space.

Beard: Let's say hypothetically that some issue is still outstanding on September 14 when the temporary CO expires. What will be the process? And staff's reaction?

Dempsey: Will depend on what is outstanding. If it is a reasonable request, we would consider that. Will depend on what the information will be and why there is a delay.

Beard: What is C2AE's involvement at this point? [C2AE was the engineering firm hired independently by the city to review the project because of safety concerns.]

Dempsey: To review the additional information. Our inspectors will also review.

Beard: So outstanding issues in C2AE?

Dempsey: The four items listed in the letter of August 15 from Weaver to Elliott, those are the items.

Loomis: I want to follow-up on question that Kevin just asked. I want to play the

what-if game on this. What if there is not compliance, and they don't bring the information forward? I'm confused as to what are open items and what are not open items. What are open items from staff report versus C2AE report? I can't trace this stuff. What if they don't comply?

Dempsey: We will have to look at if they don't comply or can't comply or meet the compliance through an acceptable process, then we can revoke the temporary CO. Based on our conversation with them, they've indicated they can and will comply. However we do hold that enforcement ability.

Loomis: But we've been hearing this from them for weeks and weeks [that they will comply], and we still don't have it. There are still concerning open items. If they don't comply and you don't issue a permanent CO, do you have to go in and tell people to move out?

Dempsey: I would ask the city attorney.

Yeadon: Temporary CO's are common but the actual permanent CO can't be issued until the code official is satisfied the building has been established under code. You'd give people a reasonable time to move out because it can't be occupied unless they can show it has been constructed to code. That's a long answer for yes.

Loomis: I want to know the answer. We've allowed people to move in. I don't agree with staff's decision to let people move in. I don't think we should have given the temp CO with all the mechanical issues and gymnastics that have occurred with this project. There are things of concern here. If they can't comply, I would think someone would have to go in and move them [the residents] out. Which would be very unfortunate for all involved.

Yeadon: I think it would have been just as unfortunate not to let them move in.

Loomis: That's a judgment call. You've answered my question. Let me move to Mr. Peabody's letter. I know Russ Peabody, I've had some dealings with him. I respect him and his professionalism as an architect, but I want to go back to that original C2AE report which I raised the very first night we had to talk about it. I'm making reference to the second paragraph on p. 2 of the July 24, 2012 report. (Read from it.) "It appears this project lacks a clear concise structural engineer who would be considered the structural engineer of record." They recommend there be one. They also point out "it is unusual to have 2 different foundation systems supporting one building" without allowing for behaviors of 2 different systems. We've had no follow-up on this. We've seen nothing addressing the 2 different foundation systems. Foundation is pretty important in building a building. The engineer of record is supposed to state that no problems will arise from this problem. Do we have a structural engineer of record? Has there been something other than Mr. Peabody's letter where he says 'to the best of my knowledge and

belief is safe for human occupancy”? I’m unclear as to who had what responsibility. In my opinion and I said this early and say it again, the C2AE report is very telling. Do we have a structural engineer of record, and have they said anything that can give this councilmember some comfort that we have structural integrity to the building beginning with the foundation?

Dempsey: The requirement in the letter about a design professional in charge was to get at this issue. C2AE says these elements need to be working together. There were different groups in the design. The key for C2AE, not to put words in their mouth, was to make sure someone could tie it all together and be responsible. Mr. Peabody was that person. He was identified. In terms of technical specifications or to the 2 foundations, I’ll leave that to our building officials to talk about. [They never got up to talk about it, although they were in the room.] In terms of intent, intent was to identify the person who could identify the overall structural integrity. He excluded things we inspect like plumbing. The structural steel, foundation, etc. issues that he is separating out that we don’t deal with. There was no utility plan, they just tied into the laterals in the alleyway.

Loomis: I’m not concerned about the utility plan. Correct me if I’m wrong. When I read this memo from Annette Irwin talking about the designated design specialist, this person is supposed to review submitted documents – to me, that is well and good but doesn’t speak to what the C2AE report is speaking to and the question of these 2 types of foundation and how they work with each other, and whether we have structural integrity. I know Council doesn’t have a vote in this. We don’t have a say in the issuance of CO’s, temporary or permanent. But I want to go on record again that there are a lot of loose ends here, and I know the city attorney is going to advise otherwise. I’m starting to become concerned about personal liability here, sitting in this chair, especially if in time there is malfeasance, and I’m not talking on behalf of staff, but the exposure and liability the city can have here – I’m going on record that there are significant open technical items in the C2AE report that need to be addressed. I’m willing to have anyone come up [to the podium] and raise my comfort level.

Dempsey; One thing we can do is go back and go to C2AE report and make sure they have a complete update. One thing we were trying to do is narrow down the scope to what we believe are remaining open. Any items not listed on our letter were items we believe they answered satisfactorily. C2AE can write it in a way that is clearer and easier to follow. As far as 2 foundations we can have building inspector talk about it. We can go back from clarity and try to deal with issues.

Loomis: You’re satisfied that all the C2AE issues have been satisfied?

Dempsey: With the exception of the ones included in the letter on August 15. Those are the four items listed in the outstanding items.

Lahanas: The correspondence from Scott Weaver was made in consultation with



C2AE so our internal inspectors and consultants were comfortable with the letter.

Loomis: I'd like to see something from C2AE then because when you read their reports there are still open issues. If they have been resolved, we hired them to do this work, I'd like to get a final communication and maybe that will make me more comfortable. Also, if I remember correctly, the motion was that council get a weekly report on the status of this project not from Planning. According to my calendar, we've gotten updates at our meetings. We have not gotten weekly updates as our motion suggested we would get. I would ask that heretofore, whether we are meeting or not, I'd like to have those weekly reports until we can bring this issue to this conclusion.

Lahanas: We provided rolling updates on email to Council. If you want narrative report at the end of each week. I would note the language was read from motion.

Triplett: [read part of the motion, not the whole thing.]

Dreger: Read the whole motion, Nathan. (Triplett refused.)

Beard: You're telling us that none of these things in 7 months from Mr. Hoffman's requirements have been met?

Dempsey: We've gotten some but it is not complete. Everything required under building code must be provided to satisfaction.

Beard: I agree with Mr. Loomis that it is difficult for us to connect the dots from C2AE as required or missing to where we are today. This checklist of things. Which ones are still outstanding, which ones are partial, this is all unclear. I don't have a good feel for it.

Loomis: I think the practicality is some of these will never be forthcoming. Example auger cast pilings. Once you put structure on foundation you can't go in and do the testing unless there is a system I'm not aware of. Some of it will not be forthcoming. I would hope there could have been some analysis of the auger cast pilings that were tested. Because the same firm, King, out of Holland, a company I'm familiar with, fine work, why couldn't we get some of the reports from them? The reality is that when you're past, and you've built, you can't get those reports in any way I'm aware of. I've asked more than one contractor and they have concurred. The opportunity has passed you by.

Lahanas: This is a good point and we're trying to come up with the best alternative available.

Loomis: I hope this building is safe but sitting here in this chair we have reports that are still open-ended. I note the challenges that we've had with this project with receiving an application from an entity dissolved several months before the

application was sent, to an unauthorized fifth floor, this project has been very problematic. I hope this building is safe and structurally sound, but that's not what the documentation I have in front of me from my judgment, and I think I've done my homework, and it does not get my level of comfort where it needs to be. I'm going on record again that the decision for the permanent CO does not vest at this council's table, it is in city's staff, but I want everyone to know where I am at this particular juncture. I hope you can send us weekly reports of where we are on this project.

Triplett: We'll see this on our work session again on September 11. You can prepare what we need in terms of C2AE and all?

Dempsey: We will try our best to get that to you by next week.

Triplett: Mr. Yeadon there's a memo from you on this project.

Yeadon: I have my opinion that there is no establishment clause violation with TIF monies. It is a private structure. The TIF monies were agreed to and disclosed before the feature was present in any of the drawings, so all those agreements were reached before that feature was added. It was added only at last council approval. Even if council wanted to have that feature removed from the structure it would be a violation of the free exercise clause to require them to remove this, and that's assuming that's a Christian cross. If that's what that is. There might be a free exercise violation if the city tried to require its removal from the building or the drawing. We had no authority to determine what the outside of the building would look like any more than we approve a home and they decide to put a cross on it.

Loomis: I appreciate what Mr. Yeadon just said but I'm perplexed by your second paragraph. No public funds used for structure itself. Just for demolition and site preparation. How do you build a structure if you don't demolish what was there, and how do you build anything without site preparation work?

Yeadon: That's a fair point. My opinion doesn't rest on that. I was just indicating what we used the TIF for. We didn't use it to put up a building with a cross on it. The feature that was complained about was not put up with government funds. It really wouldn't matter in the long run what the TIF money is used for, even the structural steel, I mean there are limitations to what you can use Brownfield or TIF money for, that was a point I made but for that purpose because we didn't construct a cross and a lot of the cases I looked at they made distinctions between crosses on private land and those were found as violations of the establishment clause, but –

Loomis: That's your deal. I'm just perplexed because the project is the project. Brownfield and TIF was legally approved. I have a hard time distinguishing these things from the building.

Yeadon: From the timeline it is distinguishable. The monies were approved before this feature ever appeared on the plans. So the determination of what to use money for was without knowing about this feature. The site preparation was all done prior to this architectural feature ever appearing on the plans. So from a factual standpoint there is that distinction.

Beard: Our zoning code as it has worked for decades controls permitted uses and dimensional uses – height, setbacks, etc. Our code has never had requirements for exterior materials or appearance, am I correct?

Yeadon: Yes.

Beard: It is so rarely an issue that we have not tried to amend to code to control this.

Yeadon: Even if you did, I don't know that you could amend it to preclude an architectural feature from this.

Beard: That's an interesting angle. We have talked about the B3 zone and developing a zone based code for appearance and materials and streetscape and the like. It may not go so far as to prohibit these things as permissible but it would give the city a greater level of control over exterior appearance and the materials used. All of us have received emails and communications of people dissatisfied with the exterior appearance. They are dissatisfied when I tell them the code does not allow us to control that. I don't know if we have an architectural theme we'd like to see happen. To pick one style would be complicated but I'm going to ask the director of planning and manager if planning staff could look at, even just a preliminary memo.

Dempsey: We can do that. We've talked about it. We can summarize where we are at.

Beard: Form-based code is gaining in popularity around the country. It bears exploring.

Dempsey: The comprehensive plan might also address this.

Triplett: Could you put Mr. Yeadon's memo on the website.

Lahanas: If it was not on the web we can put it on the website.

Triplett: It would be worth pulling this out and put it somewhere easily located by resident.

**Adjournment.**