



May 10, 2013

City of Ann Arbor City Council  
301 East Huron Street  
Ann Arbor, Michigan 48107

**RE: 413 East Huron (SP12-036)**  
**Responses to Public Comment**

Dear Mayor and Council Members:

I would like to take the opportunity to address the statements made in the booklet circulated by those in opposition at the May 6 Council meeting and referenced by residents recruited to speak during the public comment session. It was referred to by speakers as the "fact book" of unresolved legal issues; though none of the assertions made by these "facts" are valid. It is our understanding that city staff will address most of the assertions in the "fact book," however we feel it important to address these topics directly as well in order to ensure the record is clear and that facts can be distinguished from opinions and mis-information.

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**"Fact 1"** purports that the proposed site plan does not comply with applicable Michigan statutes. "Fact 1" is not a fact at all but contains quoted text from two sections of the Michigan Zoning Enabling Act. The selected portion from Section 203 provides that a zoning ordinance be based upon a plan that is crafted to promote the public health, safety and general welfare among other aspects. The D1 zoning ordinance is based on the 2009 Downtown Plan and contains a set of regulations to guide the development of D1 zoned property. A presumption exists that the D1 zoning applied to the property promotes the public health, safety and welfare. Any assertion that a site plan which conforms fully to a zoning ordinance can be in violation of the MZEA is indisputably false.

As far as this site plan review and approval is concerned, the only relevance of the property's D1 zoning classification is whether the proposed site plan demonstrates that it meets the applicable D1 form and density regulations within the zoning ordinance. The City's professional Planning Staff have found as a fact that the site plan meets and/or exceeds the zoning ordinance requirements. Please refer to the February 5, 2013 staff report for confirmation. No challenge to staff's findings has been presented.

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If those in opposition would like to challenge the legality of methods used by the enacted zoning ordinances to manage light access, traffic, and the character of some or all zoning districts for future projects, then they should choose a more appropriate forum to do so. Council has already stated their position in an appropriate manner by requesting review of the D1 district by staff and denying the moratorium on D1 site plan approvals contemplated earlier this year.

**"Fact 2"** states that the site plan is not in compliance with Ann Arbor city codes and ordinances. This is not a statement of fact. It is an unsupported conclusion to which no reasoned response can be made. We trust that city staff will reaffirm their previous analysis that the proposed site plan meets all applicable city ordinances.

**"Fact 3"** states that the developer's Citizen Participation Report failed to include required detail. However, no specific instance was provided in the "fact book" and thus no reasoned response can be made. The initial report included all of the detailed information that Planning Staff requested of the development team. When additional detail regarding the Citizen's Participation Meeting was requested at the 02/06/2011 Planning Commission meeting, the development team sent a detailed follow up report to city staff on 02/14/2013 including the additional information.

If the assertion by those in opposition to the site plan is that they did not have a chance to voice their concerns, please note that:

1. On 09/14/2012, the development team met with adjacent neighbors Norm and Ilene Tyler and Hugh Sonk as a representative of the Sloan Plaza HOA to gain their thoughts and input.
2. The development team again received input from the Tylers along with neighbors Ray Detter and Christine Crockett immediately after the 10/17/2012 Design Review Board meeting.
3. The development team mailed the required notices to neighbors ahead of the Citizen Participation meeting.
4. The development team held the required Citizen Participation meeting on 11/01/2012 which is documented in the report in question.
5. On 11/02/2012, the development team attended another meeting with neighborhood representatives including the Tylers, Mr. Detter, Ms. Crockett, and Mr. Sonk to again receive input. University of Michigan faculty member Doug Kelbaugh also attended to provide design input.
6. On 11/17/2012, the development team once again met with the Tylers, Mr. Detter, Ms. Crockett, Mr. Sonk, and Mr. Kelbaugh to discuss the project and responses to input received.

Neighboring property owners and other citizens have had ample opportunities over the last 9 months to comment on the proposed project and subsequent site plan application. The development team has in fact made many changes to the building as a result of citizen input. Whether those in opposition believe it not, the development team considered all input and implemented what we could within reason. Any claim that the Citizen Participation Meeting Report is lacking in any regard stems from those who are upset that their requests were simply not implemented in the design.

A fact that should not be discounted is that the development team was under no obligation to make any of the requested changes or do many of the things that we have pledged in the Development Agreement. It is very unusual and a bit overbearing for neighbors and neighborhood groups to demand that a property owner not construct a building that the law permits, but rather cede large amounts of its development rights. The neighboring property owners should have expected the proposed development based upon the existing character of East Huron and the historical and recent zoning of the property that always permitted a high density, high rise building of this character.

**"Fact 4"** alleges that the required off-street parking shown on the site plan requires "special exception" approval. This is not a fact but a mistake in the interpretation of the zoning ordinance.

Underground parking for the project is considered an accessory use and therefore does not require special use approval. The authors of the "fact book" confused themselves with the need for a special use permit should structured parking have been the principle use of the site. The development team trusts that Planning Staff will provide City Council with a proper interpretation of the zoning ordinance.

**"Fact 5"** asserts that "construction will kill a 250 year old legacy Burr Oak tree." The assertion fails to survive any scrutiny for many different reasons. The "fact book" states that a professional arborist stated that the "Burr Oak will die within five years if the project is constructed as proposed." This statement is not only pure hearsay but it is taken out of context and based on speculation rather than facts. The quote is taken from one of three communications from Christopher Graham.

Mr. Graham does not hold himself out as a certified arborist. He identifies himself in the 02/05/2013 e-mail as a trained landscape architect who works as a professional gardener. Furthermore, Mr. Graham admitted in the email that he had not personally observed the tree. Someone told him about it and he merely speculated as to its historic origins.

Mr. Graham then wrote a letter dated 02/14/2013 to the Historic District Commission which claimed that the tree would be subject to deep excavation and surface construction traffic within its critical root zone, yet overestimated the size of the CRZ at 50% larger than the City's own definition.

The development team has agreed to implement a construction protection plan that the City's own guidelines find "result in a very high expected survival rate for trees." Additionally, the City's Urban Forest Coordinator found that any anticipated new shading would have minimal impact on the trees ability to photosynthesize during the sunniest times of the year. Mr.

Graham then wrote a third letter to City Council dated 04/09/2013 in which he agrees that the impacts on the root zone of the burr oak will be minimized by the tree protection plans. However, he still continues to make claims regarding shading impacts that contradict the City's Urban Forester's findings.

While the concern over the health of the burr oak is real, Mr. Graham's conclusions and the inexact method he used to reach them should not be confused with facts.

The actual facts demonstrate that the proposed site plan takes measure to improve the condition of the tree through significantly reducing impervious surface area above its critical root zone, removing a competing tree within its drip line, and maintaining the tree following the construction as detailed in the tree protection program. The improvement to the tree's immediate environment, implementation of a strict tree protection plan during construction, and the post maintenance activities are designed by qualified professionals to maintain and enhance tree health.

We proposed these measures out of respect for a valuable tree, not because it was required by ordinance. The development team has great respect for this tree. Any other one-sided, distorted and careless statements to the contrary, whether in the "fact book", during public comment, or other means, are simply not credible.

**"Fact 6"** alleges that the proposed building imposes a traffic safety hazard and attempts to provide six instances of hazards. All six instances listed are pure nonsense:

1. The site plan is accused of being inadequate because no drop off area is provided on Huron Street. However, the E. Huron Right of Way is too narrow per MDOT standards for a safe drop off lane. The authors of the "fact book" are actually the ones who have proposed a hazardous condition.
2. The site plan is accused of lacking provisions for student move-in/move-out. However, this is not a site plan issue but rather an on-property, operational issue which does not materially affect ROW traffic.
3. The site plan is accused of including a hazardous, 81 degree driveway. However, MDOT standards dictate that driveway intersections ranging from 75 through 105 degrees are safe by definition.
4. The TIA does indeed calculate traffic delays for cars entering the underground parking deck. To gain perspective, however, note that the results of the TIA show an increase in queue length on E. Huron of less than one car length at the peak traffic times assuming all residents entering the building will do so by car. This calculation is very conservative as it is well established that the expected resident population does not actually arrive and depart during peak traffic times. Nonetheless, one car length of additional queue is still far from a nuisance.
5. The allegation that cars leaving the parking deck will impede E. Huron's traffic is particularly preposterous. It is, in fact, the 23,000 cars per day on E. Huron that will impede vehicles leaving the project rather than the other way around.

6. The TIA did take into account possible impacts on Ann Street. The results of the TIA show that traffic can be expected to increase by one additional car every 7 minutes at peak traffic times assuming that all residents leaving the project will do so by car and, again, ignoring the tendency of the expected resident population to travel to jobs and school at off-peak times. This rate is far from a nuisance. Please note that the additional cars will not “cut through” Ann Street, but rather will use the public streets as intended.

These are all points upon which the City’s traffic engineer and MDOT offered concurrence with the findings of the transportation design engineer. No traffic hazards or nuisances are designed into the proposed site plan.

Please also note the 2009 update to the Ann Arbor Transportation Plan was clear that increased density in downtown and on highly travelled routes are essential steps in improving the overall transportation system city-wide. Higher density reduces the use of cars and increases the use of walking, bikes and available public transportation, which, in turn, actually improves the health, safety, and welfare of the community.

While residents on Ann Street may be disappointed at a prediction of one more car per 7 minutes or those who use westbound E. Huron may be delayed another car length at peak traffic times, these changes to the current flow of traffic are encouraged by the Transportation Plan because they are expected to ease the burden on the city’s traffic system as a whole.

**“Fact 7”** asserts that allowable construction noise level is a health hazard. This statement is irrelevant for a number of reasons. First, construction techniques needed to build the proposed project do not create noise anywhere close to the maximum allowable by ordinance. One only needs to listen to similar projects currently under construction in the city to see that this is the case.

Second, if any construction technique exists that could create noise levels that loud, they would not be permissible anyway as they would violate OSHA regulations as the “fact book” so clearly points out.

Finally and most important, any issue regarding possible violations of the city’s noise ordinance is an enforcement issue and has no bearing on site plan review and approval. The allowable limits may be an issue for the document’s authors to pursue independently with the city, but it has no relevance to this procedure.

**“Fact 8”** provides that the site plan does not explain how the foundation for Sloan Plaza will be protected from damage. Please know that both the temporary shoring method and the composition of the permanent building foundation are items that the city approves through the building permit process rather than at site plan approval. Council should trust that its building department is well versed in these issues and knows what plans and specifications are required for actual construction.

Please also consider that the shoring method the design team is currently pursuing does not require encroachment on the Sloan Plaza property and therefore no easement has been requested. In addition to all of the provisions and precautions that would be taken during construction to maintain the integrity of the Sloan Plaza structure, please know that we will still monitor for unexpected movement and possible compromise of a shoring provision.

Furthermore, it should be noted that the proposed site plan holds the underground elements of the building roughly four feet away off the common property line with Sloan Plaza to keep the transition between sites consistent. The site plan holds the above grade portion of the structure off of the common property line more than 25 feet to allow light and air to reach the west façade of Sloan Plaza. Though a zero lot line building is permitted, the development team recognized that Sloan Plaza was built to the property line from the other side without provisions for a smooth transition or to maintain light and air access to the units on the second and third floors. We have voluntarily managed the design of our project to account for conditions caused by the construction of Sloan Plaza.

This level of prudent thought and planning should give Council some confidence that the development team will address all of the structural issues related to Sloan Plaza with the building department and Sloan Plaza HOA at the appropriate time.

**“Fact 9”** alleges that a lack of solar access on adjacent properties is a violation of city ordinances and then again quotes the MZEA section on requirements of zoning ordinances. The statement has no merit because there is no city ordinance that specifically regulates solar access on adjacent properties. Site plan review must be based on actual ordinances. Furthermore, the distances the “fact book” lists between adjacent structures and the nearest living units are inaccurate.

The statement also contains the implicit premise that some formula exists which measures how many hours per day are required for “adequate” solar access. As stated, there has been much misinformation and exaggeration regarding the shading impacts of the proposed building. I once again ask the Council refer to the solar study prepared in a professional manner and submitted for consideration on 04/11/2013.

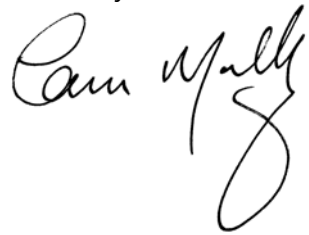
Moreover, the City Council and Planning Commission specifically considered shading impacts when it designed the overlay regulations that apply in the East Huron Character District. The Council reduced the height of buildings by 30 feet on the north side of Huron to address shading concerns. The Council implemented tower setbacks measured from the centerline of East Huron and 30 foot setbacks to residentially zoned property also to minimize shading impacts. The D1 East Huron overlay ordinance therefore was designed consistent with the MZEA to ensure adequate light and air by using these bulk limitations. Adequate solar access on the block has been established by bulk regulations, not some arbitrary formula, and the proposed site plan conforms without question.

Please contemplate that in residential structures large and small all over the city, there are living units on the north side of buildings that receive little to no direct sunlight all year long. They are considered compliant with ordinances as being healthy living conditions.

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The "fact book" presented by those in opposition to the proposed site plan is a deliberate attempt to mislead Council. I look forward to the continuation of the current Council meeting on May 13 as it moves into discussion on this site plan application. I ask that Council confirm that the work of staff is complete and accurate, that discussion be based in facts as they exist, and that a decision maintaining rights for all is reached. Members of the development team and I will be in attendance at that meeting so we can be called upon at your convenience to clarify or put into context any questions Council may still have regarding this site plan application.

Sincerely,

A handwritten signature in black ink, appearing to read "Conor McNally". The signature is written in a cursive style with a large, stylized initial 'C' and 'M'.

Conor McNally  
Chief Development Officer  
Carter