

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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MUSICRAFT, INC., d/b/a HERB DAVID
GUITAR STUDIO; KIKI PROPERTIES, LLC;
JERUSALEM GARDEN; and THE GREAT
LAKES ENVIRONMENTAL LAW CENTER,

Plaintiffs,

vs.

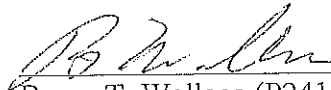
CITY OF ANN ARBOR,

Defendant.

Case No. 09- 94502
Hon.
Archie C. Brown

There is no pending or resolved
civil action arising out of the same
transaction or occurrence alleged
in the Complaint.

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COMPLAINT AND JURY DEMAND

NOW COME Plaintiffs by counsel HOOPER, HATHAWAY, PRICE, BEUCHE &
WALLACE, and for their Complaint against Defendant City of Ann Arbor, state as follows:

1. Plaintiff Musicraft, Inc., d/b/a Herb David Guitar Studio, has operated an
instrument and music store at 302 East Liberty Street, in Ann Arbor, Michigan, since 1982.
Plaintiff Kiki Properties, LLC is the owner of the property where Herb David Guitar Studio is
located.

2. Plaintiff Jerusalem Garden is a Michigan corporation which operates a
restaurant at 307 South Fifth Avenue in Ann Arbor, Michigan.

3. Plaintiff Great Lakes Environmental Law Center ("GLELC") is a non-profit group organized under 26 USC §501(C)(3) of the Internal Revenue Code and has a principal place of business located at 440 Burroughs Street, Suite 120, Detroit, Michigan.

4. Defendant City of Ann Arbor is a municipality located in Washtenaw County, Michigan.

5. The matter in controversy exceeds the sum of \$25,000, exclusive of interest and costs and the Court otherwise has jurisdiction over this matter.

The Parking Garage Project

6. On or about February 17, 2009, the City approved an underground Parking Garage for 677 spaces to be built under the surface parking lot north of the downtown library on South Fifth Avenue.

7. The Parking Garage will extend four stories beneath the ground and will require excavation of a significant percentage of the city block.

8. The excavation for this project is massive and will include the removal of tens of thousands of cubic yards of material. The excavation is likely to extend at least 50 feet beneath the ground, creating a huge crater in the middle of downtown Ann Arbor.

9. The Parking Garage is being designed to support future development aboveground which may include a structure as high as 24 stories.

10. The Parking Garage is located in the middle of an historic district as designated by the Ann Arbor Historic Commission.

11. The construction is anticipated to last approximately two years. Due to the enormity of the project, neighboring property owners will essentially lose the use of their properties due to the heavy construction activities.

12. The construction activities will include the removal of thousands of cubic yards of soil, pilings being driven deep into the ground and heavy construction equipment going to and from the site on a daily basis.

13. The construction activities will cause strong damaging vibrations to surrounding historic buildings, huge dust clouds and deafening noise levels.

14. Access to properties in the project area including, but not limited to, Plaintiffs' properties, will be extremely limited during the two years of construction.

15. Due to the size and scope of the excavation, there is the potential for ground instability from subsidence, sliding or heaving which could damage surrounding historic properties.

16. The City has acknowledged that it will be extremely difficult for neighboring residents and businesses to live or work in the area during construction due to the noise and vibration.

17. One of the City engineers advised a resident living on Division Street near the project site to move because the noise and vibrations from the construction activities would make it essentially uninhabitable.

18. One of the City engineers for the project advised Plaintiff Herb David Guitar Studio that the construction will cause the entire Studio to vibrate for a year.

The Herb David Guitar Studio

19. Herb David has operated a guitar studio in Ann Arbor for 47 years. His current studio at 302 East Liberty Street, where he has operated for 27 years, is located approximately 66 feet from the proposed Parking Garage.

20. Mr. David makes and restores musical instruments and is well recognized in the music industry as one of the most skilled artisans in the Country. His list of clients includes music legends Eric Clapton, John Paul Jones, Carole King and Jerry Garcia.

21. In the 1960's famous musicians would regularly visit his studio, including Bob Dylan, Joni Mitchell and Jimi Hendrix.

22. Recording star Aimee Mann recently asked Mr. David to repair her guitar so she could play it for the Grammy Awards, and then mentioned Mr. David by name on the Jay Leno Show.

23. Articles about Mr. David and his famous guitar studio have appeared in Newsweek, the Washington Post, and many other newspapers and magazines. Mr. David has also made numerous appearances on television, including "The Today Show."

24. Mr. David receives instrument orders from all over the world and is regularly contacted by the Metropolitan Museum of Art for his expertise on musical instruments.

25. The building where the Herb David Guitar Studio is located was built in 1920, and has been designated as an historic building by the Ann Arbor Historic Commission.

26. Mr. David has spent hundreds of thousands of dollars over the years carefully renovating his studio in compliance with the strict construction standards of the Ann Arbor Historic Commission.

27. The Herb David Guitar Studio is also a retail store which sells a wide variety of musical instruments including a large selection of acoustic and classical guitars. The Studio sells instruments which can cost in excess of \$100,000.

28. The Studio also sells rare and antique instruments which Mr. David has acquired from all over the world. This antique collection includes string instruments dating from the Renaissance Period.

29. The huge inventory of musical instruments are all displayed closely together and hang from rotating hooks. The slightest vibrations from the construction of the Parking Garage can damage these instruments and even cause them to fall from their display hooks.

30. Mr. David makes and restores all of his musical instruments in the loft of 302 East Liberty.

31. The manufacture and restoration of musical instruments is an extremely delicate, precise process which requires a quiet, pristine working environment. The quality of the craftsmanship would be significantly impacted by dust and vibrations from construction of the Parking Garage.

32. The Herb David Guitar Studio employs 35 people and derives approximately half of its income from providing music lessons on site to over 300 students. It would be extremely difficult, and at times impossible, to continue providing music lessons at the Studio due to the vibrations, noise and dust from the construction of the Parking Garage.

33. Most customers who purchase instruments visit the Studio on numerous occasions to play and test-out the instrument prior to their purchase. It would be extremely difficult, and at times impossible, for customers to evaluate and play instruments in the Studio due to the vibrations, noise and dust caused by the construction of the Parking Garage.

34. If construction of the Parking Garage is allowed to proceed, Herb David Guitar Studio will sustain a staggering loss of revenue and this famous Ann Arbor institution may not survive.

Jerusalem Garden Restaurant

35. Jerusalem Garden has operated a restaurant at 307 South Fifth Avenue in Ann Arbor for 22 years.

36. Jerusalem Garden is a landmark Ann Arbor restaurant famous for its falafel.

37. Jerusalem Garden has received many restaurant awards for its high quality cuisine including being named the Best Middle Eastern Restaurant by the MetroTimes, the Michigan Daily and the Current. Readers of The Ann Arbor News recognize Jerusalem Garden as the best inexpensive restaurant in town.

38. Since 2006, Jerusalem Garden has spent in excess of \$100,000 in renovations to the restaurant.

39. Jerusalem Garden has an outdoor patio and in the warmer months approximately 60% of its customers dine outside. The patio is located just a few feet from the proposed Parking Garage.

40. During the two years of construction the sidewalk in front of the restaurant will be torn up and Fifth Avenue will be closed, making it extremely difficult for Jerusalem Gardens' customers to access the restaurant.

41. The City has informed Jerusalem Garden that it will lose utility service at various times during the construction process.

42. Given the limited access to the restaurant during construction, it will be extremely difficult for Jerusalem Gardens' suppliers to make deliveries to the restaurant.

43. The vibration, dust and noise from construction of the Parking Garage will make the Jerusalem Garden patio essentially unusable resulting in a significant loss of revenue for Jerusalem Garden.

44. The vibrations, dust, noise and limited access caused by construction of the Parking Garage will result in significantly fewer customers visiting the restaurant and a substantial loss of revenue for Jerusalem Garden.

45. The interference with Jerusalem Garden business from construction of the Parking Garage will at times be so substantial that the Jerusalem Garden will not be able to operate its restaurant.

**The City's Approval of the Parking Garage Project
In Violation of the Open Meetings Act**

46. On or about February 17, 2009, the Ann Arbor City Council convened a meeting to address various matters of City business and vote on a number of resolutions and ordinances.

47. One of the matters up for vote on the agenda was a "Resolution to Approve South Fifth Avenue Parking Garage and Street Improvement Site Plan (319 South Fifth Avenue)," which was accompanied by a public hearing on the Resolution.

48. The South Fifth Avenue Parking Garage is a proposed 677 space underground parking structure to be built under the City-owned surface parking lot located at 319 South Fifth Avenue. The project budget for the Parking Garage is approximately \$56 Million.

49. One of the speakers during the February 17, 2009 Public Hearing was Steve Bean, Chairman of Ann Arbor's Environmental Commission. Mr. Bean requested that the Council postpone deciding the Parking Garage Resolution until the City properly evaluated the environmental impacts of the project, the need for the project and the range of alternatives to the project were given adequate consideration.

50. There was virtually no public consideration by the Council members of postponing a decision on the proposed new Parking Garage but discussion of the matter did occur via private email among members of the Council during the public meeting.

51. At the February 17, 2009 public meeting, Environmental Commission Chairman Bean detailed in writing the potential for the project's unnecessary and avoidable environmental impacts and raised numerous questions and decision-making criteria that warranted further study. Chairman Bean's written comments are attached as Exhibit A and incorporated by this reference.

52. Chairman Bean expressed to Council his concern about "the lack of consideration of environmental impacts (such as greenhouse gas emissions) from increasing parking supply."

53. Chairman Bean requested that City Council "postpone action" on the proposed underground parking structure to allow City Council to get "comprehensive" information on the City's "parking availability data," "parking demand management efforts" and "the presumed need for the structure and possible alternatives before approving its construction."

54. After Chairman Bean proposed that the Council postpone the Parking Garage decision, several members of the City Council began to engage in communication via private email, discussing their thoughts on postponement, including, but not limited to, the following:

- (a) Council Member Hohnke began the discussion by asking Council Member Smith "I assume DDA would not be happy with a postponement of the structure, yes?". Smith replied "[t]rue. But postponing to a date certain may be palatable...";
- (b) The discussion continued and eventually involved emails among Hohnke, Smith, Council Member Teall, Council Member Greden, Council Member Higgins and Council Member Briere, all within approximately an hour after the meeting had commenced;
- (c) The emails discussed whether the members were in favor of postponement and the reasons why. For example, one of Greden's emails to Teall and Hohnke stated "she's against Fifth/Division and wants time to work on excluding that," referring to why Council Member Higgins was in favor of postponement; and

(d) Another email from Greden to Teall and Hohnke stated "[n]o postponement. It's not necessary. One person has a problem with Fifth/Division...and remember...we already voted on this and approved it."

55. The private email exchanges were among a group of six members of the City Council, which is a quorum. The emails are attached as Exhibit B and incorporated by this reference.

56. The resolution to approve the Parking Garage site plan passed at the February 17, 2009 City Council Meeting by a vote of 10 to 1.

57. At the February 17, 2009 meeting, Council also passed two additional resolutions that authorized publication of a Notice of Intent to issue general obligation parking facility capital improvement bonds and authorized the issuance of said bonds. The bonds would be in the amount of \$55 Million to finance the Parking Garage.

The City's Violation of the Freedom of Information Act

58. On or about March 27, 2009, GLELC sent the City a request pursuant to the Freedom of Information Act ("FOIA") for all records relating to the City Council's resolution to approve the Parking Garage Site Plan and all records relating to the bonding and financing of the proposed Parking Garage.

59. On or about April 23, 2009, GLELC sent the City a FOIA request for all records produced, prepared or otherwise created by Ann Arbor City Council members during the Council's February 17, 2009 meeting.

60. On or about May 4, 2009, GLELC sent the City a FOIA request for all records produced, prepared or otherwise created by City Council members during the City Council's March 2, 2009 and March 16, 2009 meetings.

61. GLELC's FOIA requests are attached as Exhibit C and incorporated by this reference.

62. The City granted in part and denied in part the FOIA requests from GLELC. The City's responses to the FOIA requests are attached as Exhibit D and incorporated by this reference.

63. In its responses to the March 27 and May 4 requests, the City declined to disclose certain information based on the following provisions of the FOIA:

- (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a);
- (b) Documents and portions of documents that constitute communications from attorneys in the City Attorney's Office to City staff and/or Council members. MCL 15.243(1)(g)(h); and
- (c) Communications and notes between City staff that are of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action and for which the public interest in encouraging frank communication between officials and employees of public bodies outweighs the public interest in disclosure. MCL 15.243(1)(m)

64. In its response to the April 23 FOIA request, the City declined to disclose certain information based on the above with the exception of the "advisory" exemption. MCL 15.243(1)(m)

65. In responding to GLELC's FOIA requests, the City relied on the above exemptions in withholding emails between Council members regarding a postponement of the vote to approve the Parking Garage.

66. The emails between Council members do not constitute communications of a personal nature and therefore FOIA exemption 1(a) does not apply.

67. The emails between Council members did not involve attorneys for the Council and therefore FOIA exemptions 1(g) and (h) do not apply.

68. The emails between Council members are not advisory in nature and the public interest in encouraging frank communications between officials and employees of public bodies does not outweigh the public interest in disclosure and therefore FOIA exemption 1(m) does not apply.

69. Upon information and belief, much of the material exempted from GLELC's FOIA requests were disclosed as part of a similar FOIA request submitted by the Ann Arbor Chronicle.

**The Parking Garage Will Have Significant Environmental Impacts
And Its Approval Is Inconsistent With The City's Own Environmental Policies**

70. The proposed Parking Garage would have approximately 667 spaces as provided in the approved site plan.

71. On the assumption that each space will be filled by an average of one vehicle during the day and another vehicle during the evening, the 677 spaces will support 494,210 vehicle trips per year.

72. The City's own Parking Study completed by Nelson/Nygaard Consulting Associates states that downtown parkers drive an average of 13.7 miles to travel downtown. The Parking Study is too voluminous to attach but is available at http://a2dda.org/resources/data_reports/ and is incorporated by this reference.

73. The 494,210 additional vehicle trips per year resulting from the Parking Garage will result in 6,770,677 vehicle miles traveled ("VMT") per year, based on the City's own Parking Study.

74. A VMT is a unit of measure that calculates the total miles traveled by all vehicles in a specified area for a specific period of time. VMT is used to evaluate the use a roadway receives at different times of the day.

75. Based on the average annual emissions for passenger cars as calculated by the U.S. Environmental Protection Agency, the 6,770,677 VMT per year will result in the following air pollution emissions in Ann Arbor on an annual basis:

- (a) 41,757 pounds of hydrocarbons;
- (b) 311,690 pounds of carbon monoxide;
- (c) 20,730 pounds of nitrogen oxides;
- (d) 6,201,940 pounds of carbon dioxide; and

76. Based on the average annual emissions for passenger cars as calculated by the U.S. Environmental Protection Agency, the 6,770,677 VMT per year will result in the consumption of 314,836 gallons of gasoline on an annual basis.

77. In addition to the environmental impact of increased automobile emissions, the construction of the new Parking Garage will also cause significant localized environmental impacts such as emissions from construction equipment, particulate pollution and dust throughout the project area.

78. The City Council has adopted a resolution to reduce greenhouse gas emissions from the Ann Arbor community 20% from 2000 levels by 2015. Despite having adopted this resolution, the City has not undertaken any formal study or analysis to determine whether the proposed Parking Garage is consistent with this policy.

79. The City itself has expressed concern over the increase in VMT in Ann Arbor in recent years as evidenced by the City's "State of Our Environment" report which states in

pertinent part: "The total vehicle miles traveled (VMT) have been steadily growing over the last several years. In 2003, there were a total of 8,338,000 VMT for the Ann Arbor urbanized area as defined by the Census. VMT increased to 8,677,000 by 2005 – a 4% increase. VMT per capita has also steadily increased from 27.2 daily VMT in 2003 to 28.1 in 2005 – a 3% increase." The "State of Our Environment" report is attached as Exhibit E and incorporated by this reference.

80. The City has acknowledged that an increase in VMT will have a harmful effect on the environment of Ann Arbor because "more greenhouse gases are produced, contributing to air and water pollution."

81. Chairman Bean's environmental concerns about the Parking Garage were essentially ignored by City Council. Most of the minimal discussion that did occur regarding postponement of the project to consider its environmental impacts were done via private email messages as more fully described above.

82. The City has failed to consider the conclusions and recommendations from its own Parking Study before approving the proposed Parking Garage.

83. The City has not conducted any analysis or study to determine the extent to which the proposed Parking Garage will increase VMT in the City of Ann Arbor.

84. The City has numerous feasible and prudent alternatives to the proposed new Parking Garage, including, but not limited to, the following:

- (a) More efficient use of existing parking resources;
- (b) Improved parking demand management;
- (c) Adoption of alternative transportation;
- (d) Construction and operation of a smaller and less costly new parking structure at this site or other sites;

- (e) Alternatives detailed in the Ann Arbor Downtown Parking Study conducted by Nelson/Nygaard Consulting Associates; and
- (f) Such other alternatives as may become apparent during the course of discovery in this matter.

COUNT I

NUISANCE

85. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 84 above and rely upon the same as though fully restated herein.

86. The City's proposed Parking Garage project will cause vibrations, noise and dust, creating a nuisance that will cause damage to, and interfere with the businesses, of Plaintiffs Herb David Guitar Studio and Jerusalem Garden.

87. The nuisance which is threatened by the City's actions will unreasonably interfere with Plaintiff Herb David Guitar Studio's use and enjoyment of its property in several ways, including, but not limited to, the following:

- (a) Potential damage to musical instruments resulting from strong vibrations;
- (b) Inability to construct or restore musical instruments due to vibrations, noise and dust;
- (c) Inability to conduct music lessons on site;
- (d) Loss of customers who don't have reasonable access to the business during construction;
- (e) Loss of business revenues;
- (f) Laying off employees due to lack of business;
- (g) Loss of property value;
- (h) Potential structural damage due to excavation and/or vibrations; and

- (i) Such other ways as may become apparent during the course of discovery in this matter.

88. The threatened nuisance resulting from the City's actions will unreasonably interfere with Plaintiff Jerusalem Garden's use and enjoyment of its property in several ways, including, but not limited to, the following:

- (a) Loss of outdoor eating area due to vibrations, noise and dust;
- (b) Loss of customers who don't have reasonable access to the business during construction;
- (c) Inability of suppliers to access the business during construction;
- (d) Laying off employees due to lack of business;
- (e) Loss of business revenues;
- (f) Loss of property value;
- (g) Potential structural damage due to excavation and/or vibrations;
- (h) Loss of utility service; and
- (i) Such other ways as may become apparent during the course of discovery in this matter.

89. The threatened nuisance can be avoided only if the City is enjoined from proceeding with the Parking Garage project.

90. The threatened interference with Plaintiffs' use and enjoyment of their properties is the result of intentional and unreasonable actions by the City.

91. Plaintiffs do not consent to the City's threatened unreasonable interference with the use and enjoyment of their properties resulting from the Parking Garage project.

COUNT II

TRESPASS

92. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 91 above and rely upon the same as though fully restated herein.

93. At all times relevant hereto Plaintiffs Herb David Guitar Studio and Jerusalem Garden have owned and/or occupied the properties located at 302 East Liberty Street and 307 South Fifth Avenue in Ann Arbor, Michigan.

94. If the Parking Garage project is permitted to go forward, vibrations, noise and dust from the construction process will physically invade the Plaintiffs' properties.

95. The vibrations, noise and dust which will enter, settle upon and physically invade Plaintiffs' properties will interfere with Plaintiffs' use and possession of their properties and will constitute a continuing trespass upon Plaintiffs' properties.

96. Plaintiffs do not consent to having vibrations, noise and dust physically invade their land and property.

97. The City's actions which would result in a trespass upon Plaintiffs' properties would be intentional and willful, entitling Plaintiffs to compensatory, exemplary, and punitive damages.

98. The only way to prevent the City's trespass upon Plaintiffs' properties is to enjoin the City from proceeding with the Parking Garage project.

COUNT III

VIOLATION OF FREEDOM OF INFORMATION ACT

99. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 98 above and rely upon the same as though fully restated herein.

100. The City of Ann Arbor is a "public body" as defined by FOIA, MCL 15.232(d). The public records maintained by the City are subject to disclosure under the provisions of FOIA.

101. Jurisdiction is proper in this court pursuant to MCL 15.240(1), because Plaintiffs have requested under FOIA that the City disclose certain documents in its possession and the City has made a final determination to deny that request.

102. Venue is proper in this court pursuant to MCL 15.240(4) because the City of Ann Arbor is located in Washtenaw County.

103. On March 27, April 23 and May 4 of 2009, Plaintiffs sent FOIA requests to the City for the following:

- (a) All records relating to the City Council's resolution to approve the Parking Garage Site Plan passed on February 17, 2009;
- (b) All records relating to the bonding and financing of the proposed Parking Garage;
- (c) All records produced, prepared or otherwise created by Ann Arbor City Council members during the Council's February 17, 2009 meeting; and
- (d) All records produced, prepared or otherwise created by Ann Arbor City Council members during the City Council's March 2, 2009 and March 16, 2009 meetings.

104. The City granted in part and denied in part Plaintiffs' FOIA requests. The City declined to disclose certain information based on the following provisions of the FOIA:

- (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a);
- (b) Documents and portions of documents that constitute communications from attorneys in the City Attorney's Office to City staff and/or Council members. MCL 15.243(1)(g), (h); and

- (c) Communications and notes between City staff that are of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action and for which the public interest in encouraging frank communication between officials and employees of public bodies outweighs the public interest in disclosure. MCL 15.243(1)(m);

105. The City's explanations are insufficient, as a matter of law, to justify nondisclosure of important public records pertaining to the \$55 million Parking Garage project.

106. The City is required under FOIA to provide the above-described information because "[a]ll persons....are entitled the full and complete information regarding the affairs of the government." MCL 15.231(b)

107. GLELC has the right to inspect, copy or receive copies of a requested public record of the public body except where certain exemptions apply. MCL 15.233(1)

108. The City has failed to meet its burden of claiming an exemption because FOIA exemptions must be supported by substantial justification and explanation, not merely conclusory assertions.

109. The City withheld email communications among Council members concerning whether to postpone a decision on the Parking Garage resolution which is clearly a matter of urgent public interest. These communications do not fall within any of the exemptions to FOIA claimed by the City.

110. Notwithstanding the urgent public interest in immediate production of the requested documents, GLELC has made extensive efforts to resolve this dispute without recourse to litigation. These efforts have been unsuccessful, and the need for public disclosure of the requested information has increased because of the impending sale of bonds to finance the Parking Garage project.

111. GLELC will be irreparably injured, absent immediate and full disclosure of the information on this matter of significant public concern.

112. GLELC has no adequate remedy at law to address the injury it will sustain if it does not receive immediate and full disclosure of the information requested from the City.

COUNT IV

VIOLATION OF OPEN MEETINGS ACT

113. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 112 above and rely upon the same as though fully restated herein.

114. This is an action to enforce the Michigan Open Meetings Act. MCL 15.261, et seq.

115. The City of Ann Arbor is a "public body" as defined by the Open Meetings Act. MCL 15.262(a)

116. Jurisdiction is proper in this court pursuant to MCL 15.270(1).

117. Venue is proper in this court pursuant to MCL 15.270(4).

118. As more fully described above, at the City Council meeting on February 17, 2009, the Chairman of the City of Ann Arbor's Environmental Commission requested that City Council postpone its decision regarding the bonding and approval of the proposed new Parking Garage until the City properly determined the environmental impact of the project, the need for the project and the range of less impacting alternatives to the project.

119. As more fully described above, during the City Council meeting on February 17, 2009, several City Council members exchanged numerous email messages discussing whether they supported postponement and why other City Council members supported or opposed postponement.

120. It was determined through this private email discussion which City Council members opposed postponement and which members supported postponement and what would be the likely result of a vote on the matter.

121. Having made these determinations in private, a motion for postponement was never brought or publicly discussed and voted on by the full City Council in open as required by the Open Meetings Act.

122. The Open Meetings Act requires that all decisions and deliberations of a public body shall be made at a meeting open to the public. MCL 15.263

123. The City violated the Open Meetings Act when City Council members discussed and decided not to postpone a vote on the resolution to approve the Parking Garage project through private email communication.

124. After the private email discussion among Council members, Council voted to approve the site plan for the new Parking Garage and the bonding to finance the project.

125. On or about March 27, 2009, GLELC submitted a FOIA request to the City for all communications between City Council members which occurred at the Council meeting of February 17, 2009.

126. In response to GLELC's FOIA request, the City refused to provide the email communications between Council members regarding postponement of the vote on the resolution to approve the Parking Garage.

127. As a result of the City's failure to comply with FOIA, Plaintiffs did not become aware of the private emails and the City's violation of the Open Meetings Act until on or about July 9, 2009.

128. The City only became aware of the full extent of the private emails and the City's violation of the Open Meetings Act when these emails were made available through a third party on or about July 9, 2009.

129. No minutes were produced or were available of the private email meeting not open to the public that was conducted by the Council members on or about February 17, 2009.

130. No notice was ever provided to the public of this private meeting as required under MCL 15.263 and 15.264.

131. The Open Meetings Act requires that each public body keep minutes of each meeting. MCL 15.269

132. A decision made by a public body may be invalidated if decisions or deliberations are made by a public body at a meeting that is not open to the public. MCL 15.270(2)

COUNT V

MICHIGAN ENVIRONMENTAL PROTECTION ACT

133. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 132 above and rely upon the same as though fully restated herein.

134. The Michigan Constitution establishes the protection of public health, welfare and the environment as a paramount concern for state government. Article IV, Section 52 of the Michigan Constitution provides:

"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

135. The Legislature fulfilled its duty to protect the environment by passing the Michigan Environmental Protection Act ("MEPA"). MCL 324.1701, et seq.

136. MEPA provides that "any person" may bring an action in court for "the protection of the air, water and other natural resources and the public trust in these resources from pollution, impairment or destruction." MCL 324.1701(1)

137. If it is established under MEPA that the proposed Parking Garage is likely to "pollute, impair or destroy" the environment then the City must demonstrate that there is "no feasible and prudent alternative" that would achieve the objective of the proposed Parking Garage, and that the proposed new Parking Garage is "consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern of the protection of its natural resources from pollution, impairment and destruction." MCL 324.1703(1)

138. To fulfill its obligations under MEPA, the City must engage in a thorough public process to identify and understand any potential environmental impacts of, and alternatives to, the proposed new Parking Garage.

139. The proposed Parking Garage is intended to facilitate additional motor vehicle miles traveled ("VMT") to downtown Ann Arbor.

140. The City has acknowledged that an increase in VMT will have a harmful effect on the environment of Ann Arbor because "more greenhouse gasses are produced, contributing to air and water pollution."

141. Automobiles produce many different pollutants which have been demonstrated to have harmful health effects on humans including, but not limited to, hydrocarbons, carbon monoxide, nitrogen oxides and particulate matter.

142. Exposure to air pollution is associated with numerous effects on human health, including pulmonary, cardiac, vascular and neurological impairments. Acute health effects include eye irritation, headaches and nausea. Chronic effects are usually not immediate and tend not to be reversible when exposure to the pollutant ends. Some chronic health effects include decreased lung capacity, asthma and lung cancer resulting from long-term exposure to toxic air pollutants.

143. Increased VMT resulting from the proposed Parking Garage will increase the level of hydrocarbons in the air in Ann Arbor. Hydrocarbons are a major contributor to urban smog and long-term exposure to high levels can cause liver damage and cancer.

144. Carbon dioxide is a significant component of vehicle emissions. Carbon dioxide is a greenhouse gas and is a major contributor to global warming.

145. An increase in the VMT resulting from the proposed Parking Garage will result in an increase in the level of carbon monoxide in the air in Ann Arbor. Carbon monoxide is an odorless, colorless gas which contributes to the formation of smog. For a person with heart disease, a single exposure to carbon monoxide at low levels may cause chest pain and reduce that person's ability to exercise. Repeated exposures may contribute to other cardiovascular effects and low concentrations of carbon monoxide can cause fatigue in healthy people.

146. An increase in the VMT resulting from the proposed Parking Garage will cause an increase in the level of nitrogen oxides in the air in Ann Arbor. Nitrogen oxides react with ammonia, moisture and other compounds to form nitric acid and related particles. Human health concerns from these particles include effects on breathing and the respiratory system, damage to lung tissue, and premature death. Small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease such as emphysema and

bronchitis, and aggravate existing heart disease. In the air, nitrogen oxides react readily with common organic chemicals and even ozone, to form a wide variety of toxic chemicals, some of which may cause biological mutations.

147. An increase in the VMT resulting from the proposed Parking Garage will cause an increase in the level of particulate matter in the air in Ann Arbor. Particulate matter is the term for solid or liquid particles found in the air. Exposure to particle pollution is linked to a number of problems, including, but not limited to, increased respiratory symptoms, irritation of the airways, coughing, difficulty breathing, decreased lung function, aggravated asthma, development of chronic bronchitis, irregular heartbeat, non-fatal heart attacks, and premature death in people with heart or lung disease.

148. The proposed Parking Garage will "pollute, impair and destroy" the natural resources in several respects, including, but not limited to, the following:

- (a) The Parking Garage will increase motor vehicle miles traveled ("VMT") to downtown Ann Arbor, causing increased greenhouse gas pollution and other air pollution impacts;
- (b) Construction of the Parking Garage will create significant localized environmental impacts such as particulate pollution, dust and noise in the project area;
- (c) The manufacture and synthesis of construction materials require vast amounts of resources and energy with associated pollution, impairment and destruction of the natural environment; and
- (d) Such other pollution impacts as may become apparent during the course of discovery in this matter.

149. During the City Council meeting on February 17, 2009, Environmental Commission Chairman Bean urged City Council to postpone its decision regarding the bonding and approval of the new Parking Garage until the City properly considered the need for the

project, the environmental impact of the project and the range of less impacting alternatives to the project.

150. In clear violation of MEPA, the City failed to consider the environmental impacts of the proposed new Parking Garage and/or the alternatives to the Parking Garage.

151. Since the City has acknowledged that an increase in VMT resulting from the proposed Parking Garage will pollute, impair or destroy the environment, under MEPA the City must show that there is no feasible and prudent alternative to the Parking Garage and that its construction is consistent with the promotion of the public health, safety and welfare in light of the State's paramount concern for the protection of its natural resources from pollution, impairment or destruction.

152. In 2006, the Ann Arbor Downtown Development Authority commissioned a Parking Study of the downtown parking system by Nelson/Nygaard Consulting Associates as part of a broader evaluation of transportation needs and opportunities for downtown Ann Arbor. The Parking Study was completed in June, 2007 and included an inventory of existing parking, focus groups, and a wealth of recommendations relating to parking policy in downtown Ann Arbor. A copy of the Parking Study is attached hereto as Exhibit E.

153. The Parking Study concluded that the City should adopt a market-based approach to determine how much parking is needed and recommended that numerous parking demand management strategies be exhausted before any new parking structures were built.

154. The Parking Study contained numerous prudent and feasible alternatives to the construction of a new Parking Garage which are incorporated by this reference.

155. The City failed to even consider any prudent and feasible alternatives to the proposed Parking Garage.

156. The construction of the proposed Parking Garage violates the City's own environmental policies and is not consistent with the promotion of the public health, safety and welfare and protection of the State's natural resources from pollution, impairment or destruction.

COUNT VI

DECLARATORY AND INJUNCTIVE RELIEF

157. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 156 above and rely upon the same as though fully restated herein.

158. As more fully described above, the City approved construction of the Parking Garage in violation of the Open Meetings Act and the Freedom of Information Act.

159. As more fully described above, the City failed to consider reasonable alternatives to the Parking Garage before approving its construction.

160. As more fully described above, if the Parking Garage project is allowed to proceed, it will have a devastating impact on nearby business in the historic district including, but not limited to, Plaintiffs Herb David Guitar Studio and Jerusalem Garden.

161. As a direct and proximate result of the construction of the Parking Garage, Plaintiffs will sustain immediate and irreparable injury for which there is no adequate remedy at law.

162. As a result of the City's actions more fully described above, it is necessary for the Plaintiffs to obtain a declaratory ruling from the Court that the Parking Garage project was approved in violation of the Open Meetings Act and the Freedom of Information Act and that in light of these violations and the project's potential environmental impacts and threatened

interference with Plaintiffs' businesses, the project cannot proceed without further study and careful consideration of reasonable alternatives to the project.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

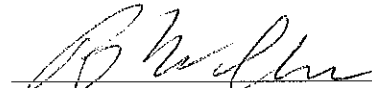
- (a) Declare that the City approved the Parking Garage project in violation of the Open Meetings Act;
- (b) Declare that the City's nondisclosure of requested documents violated the Freedom of Information Act;
- (c) Enter an order which invalidates City Council's approval of the site plan for the Parking Garage and the bonding to fund the project which occurred at its meeting on February 17, 2009;
- (d) An order which enjoins City Council members from engaging in any further private emails discussions during public meetings regarding the Parking Garage project or funding for the project;
- (e) Enter an order holding that the proposed Parking Garage project constitutes a threatened nuisance to Plaintiffs' properties;
- (f) Enter an order holding that the proposed Parking Garage project constitutes a threatened trespass to Plaintiffs' properties;
- (g) Enter an order holding that the proposed Parking Garage project is likely to pollute, impair or destroy the air, water and other natural resources;
- (h) Enter a preliminary injunction requiring the City to undertake a study to determine the following:
 - (i) Consideration of the environmental impacts of the proposed new Parking Garage;
 - (ii) Identification and evaluation of the purpose and need for the proposed new Parking Garage; and
 - (iii) Evaluation of alternatives to the proposed new Parking Garage;
- (i) Enter a preliminary injunction which prohibits the City from constructing the proposed Parking Garage until a comprehensive study as detailed above is completed;

- (j) If construction of the Parking Garage proceeds, award Plaintiffs damages for the City's interference with the use and enjoyment of their properties as more fully described above;
- (k) If construction of the Parking Garage proceeds, award Plaintiffs damages for the trespass upon their properties committed by the City as more fully described above;
- (l) Award GLELC its actual and reasonable attorney's fees, as required by MCL 15.240(6);
- (m) Award Plaintiffs their actual and reasonable attorney's fees as required by MCL 15.271(4); and
- (n) Award Plaintiffs such other relief as the Court deems just under the circumstances.

HOOPER, HATHAWAY, PRICE,
BEUCHE & WALLACE, PC

Dated: August 11, 2009

BY:



Bruce T. Wallace (P24147)
William J. Stapleton (P38339)
Attorneys for Plaintiffs

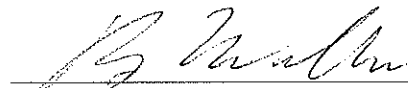
JURY DEMAND

NOW COME Plaintiffs by counsel HOOPER, HATHAWAY, PRICE, BEUCHE & WALLACE, and hereby demand a trial by jury on all issues so triable herein.

HOOPER, HATHAWAY, PRICE,
BEUCHE & WALLACE, PC

Dated: August 11, 2009

BY:



Bruce T. Wallace (P24147)
William J. Stapleton (P38339)
Attorneys for Plaintiffs

EXHIBIT A

DDA projections assume that demand will not drop. However, if higher rates cause businesses to flee to office space with free parking, or if higher parking rates deter shoppers, those assumptions will not hold up. If businesses did not consider the cost of parking, the city would not have had to promise Google 600 free spaces to locate downtown. It would also be unnecessary to build a \$56.4 million parking structure to attract development, such as a new convention center. Because campus area structures are the most heavily used, the DDA assumes it can maintain parking revenue by renting to students. But if student parkers don't fill the revenue hole, the shortfall will have to be made up by the city's general fund. That means service cuts or a tax increase.

MESSAGE FROM STEVE BEAN FOLLOWS:

Dear council members,

I'm writing to ask that you

- postpone action on the proposed underground parking structure at the "library lot",
- request a comprehensive presentation by the DDA on its parking availability data for the structures as well as on its parking demand management efforts, and
- perform a more extensive analysis of the presumed need for the structure and possible alternatives before approving its construction.

I believe that a delay is fully justified given the state of the economy, the upcoming addition of several hundred new parking spaces elsewhere downtown, the incomplete implementation of alternatives for managing peak parking demand, the lack of consideration of environmental impacts (such as greenhouse gas emissions) from increasing parking supply, and the likelihood of a permanent decrease in parking demand early in the lifetime of the proposed structure. (The last two might seem contradictory, but any increase in emissions, no matter how short-lived, would be very detrimental.)

The Executive Summary of the City's Draft Transportation Plan Update report states that

"The City's vision is to become more transit-oriented, bike-friendly, and pedestrian-friendly, and less reliant on fuel consumptive forms of motorized travel."

The proposed underground parking structure would be entirely counterproductive to that vision as well as to other of our environmental goals.

More than 100 new on-street parking spaces are about to be added to 5th and Division streets, through the heart of downtown, and close to 200 new public spaces will become available when the parking structure for the City Apartments development at 1st & Washington is completed. The need for more capacity beyond that has questionable basis.

The 2007 Ann Arbor Downtown Parking Study report by Nelson/Nygaard Consulting Associates

(http://www.a2dda.org/downloads/Phase_II_Part_6.pdf

<http://www.a2dda.org/downloads/Phase_II_Part_6.pdf>) recommended the formalization of processes for both funding new parking and determining when new supply is needed. It also recommended that "parking

demand management options be exhausted" before undertaking new construction or instituting higher rates. The City has not followed these recommendations, nor have more than a few of the eighteen "Immediate Actions" listed in the report been implemented. Those that have been pursued, such as the DDA's experiment with valet parking at the Maynard structure, are just getting underway and have insufficient results to evaluate at this point. Meanwhile, both new construction and rate increases are proposed to be undertaken simultaneously.

The technology and data available to the DDA on the parking system have opened opportunities for improved service as well as better load management. However, to my knowledge, load balancing has yet to be explored. Likewise, other resources, such as the surplus spaces in underutilized private surface lots, have not been considered for near-term peak demand management.

Meanwhile, the getDowntown program has compiled an impressive record of success with its initiatives. For example, the number of golpass trips has increased each of the last four years, by an overall increase above the base year (2003-2004) of more than 35%.

Unfortunately, AATA is now considering a rate increase for bus riders. The most likely outcome with regard to ridership of such a change would be for some users to find alternatives (perhaps even going back to commuting by car and parking in the structures.) The 2007 Annual Report of AATA (<http://www.theride.org/pdf/AnnualReport2007.pdf> <<http://www.theride.org/pdf/AnnualReport2007.pdf>>) noted that "over 80% of evening downtown workers reported that they park at on-street meters." Clearly, the lack of coordination between our parking and transit systems threatens our efforts to achieve our community goals and has much room for improvement before we resort to adding expensive capacity to handle peak demand.

One alternative would be for a portion of the funds that would otherwise be used to build and maintain the parking structure to be redirected so that the bus system can be improved without raising fares. While U-M president Mary Sue Coleman has stated that the university does not "do" payment in lieu of taxes, they do contribute to AATA's operating budget. The City and AATA could make a very strong case to the university that similarly increasing its funding to the transit system would be in their interest as well. It also might enable a greater integration of the AATA and university bus systems.

Below I've provided responses (including some components of possible alternative approaches) to comments I've heard or read regarding this issue.

Thank you for your consideration and your valuable service to our community. I'll gladly respond to any questions. (I had hoped to attend the caucus meeting on Sunday in order to discuss this, but learned on Saturday that it had been cancelled.)

Steve Bean


- People will continue to drive cars.

Yes, but less than in the past. Oil supply is expected to decline 2-4%/year minimum (and as high as 7%/year), beginning as early as 2010. That translates to an expected price increase of between 8%/year and 40%/year. Assuming a fairly conservative cost increase of 20% per year, in order to maintain zero net increase in fuel cost for driving, the owner of a car that currently gets 20 mpg would have to somehow get at least 24 mpg next year and almost 50 mpg five years from now. Five years later, they'd need to be getting almost 124 mpg. The historical turnover of the US vehicle fleet is about 15 years. On top of the higher cost for driving, most other expenses will go up, making the purchase of new vehicles even less affordable. The 2006 parking study data are already out of date with regard to these changes and trends.

(While demand in the US decreased in June 2008 by 388,000 barrels/day, it increased by 475,000 barrels/day

in China, more than offsetting the demand reduction
[\http://www.gulfnews.com/business/Oil_and_Gas/10230996.html
[\[http://www.gulfnews.com/business/Oil_and_Gas/10230996.html\]](http://www.gulfnews.com/business/Oil_and_Gas/10230996.html) .] The number of cars in China in 1993 was less than 750,000. By 2004 the number had reached 6 million. By 2005, 8 million; by 2007, 20 million. Due to that increased global demand, coupled with the coming decline in supply, gas prices will continue to rise unless drivers respond with drastic cuts in driving.)

When cars in use eventually do become smaller on average, more on-street spaces could be created, possibly by 10% or more. When people begin driving less, more existing traffic lanes could be converted to parking in order to compensate for any loss of spaces if surface lots are lost to development. Q: How many such potential spaces are there?

- The parking structure would pay for itself over its lifetime through parking fees received.

While the current system pays for itself, the individual structures don't pay for themselves. They're essentially subsidized by the surface lots and on-street spaces. Furthermore, if parking demand declines soon, the structures will become even greater financial sinks.

In any case, this assertion doesn't take into account the opportunity cost compared to the alternatives. One alternative is to leave the existing surface lot. Another would be to sell the land to a private developer and receive both the sale price and the subsequent tax payments. In economic terms, the proposed structure may be the worst of those three scenarios, especially if insufficient resources remain for the necessary development of a sustainable infrastructure.

- If parking demand decreases, the DDA can close surface lots and remove older structures from service, which would free up those sites for more productive uses.

A distinction needs to be made between short-term and long-term parking needs. Most of the long-term parking is in the structures. Eliminating surface lots may not be appropriate if most of the demand decrease is for long-term parking, which seems likely (or at least more desirable.) Eliminating parking structures before the end of their useful life would be wasteful if it could possibly be avoided. Eliminating them at all will require skillful management of the system (much like the situation we now face), primarily because the reduction in spaces would need to occur in large blocks. Furthermore, the surface lots have the highest demand throughout the day and charge the highest rates. The impact of eliminating such spaces in favor of keeping structure spaces (including underground ones) hasn't been fully considered.

The new surface lot at the old Y site plus the new on-street spaces to be added on 5th and Division will provide about 200 spaces for short-term use.

More permit spaces could be made available in the existing structures by using the improved parking system data and technologies to manage the capacity at 90% or higher rather than the recommended 85%, at least until new rates are implemented and future demand trends become clearer.

The DDA could provide coordination services to match commuters with private lot owners to take advantage of their large surplus of (widely distributed) unused spaces. The parking study contains a recommendation to that effect. This would also provide an economic benefit to existing downtown businesses.

- We need more parking to attract new businesses to downtown.

While some potential employers would prefer to have publicly provided parking for their employees, others might prefer their employees to use a reliable transit system with adequate backup services, such as guaranteed ride home. Smaller businesses and those with a commitment to community sustainability may not have the expectation of subsidized parking.

Our challenge isn't to beat the malls and the townships at the parking game, it's to envision and create a

downtown that's better and more attractive to potential residents, businesses, and visitors than the current one. The parking study report duly notes the need for things like keeping sidewalks clear of snow, for example. Parking will continue to play a role, but a declining one and only one among many.

In terms of value to downtown businesses, the best opportunity may very well lie in attracting more visitors on days and times when the parking system is underutilized.

- The DDA has a 1000+ person waiting list for parking permits which the new structure could address.

We don't know enough about those people's current situations to assess the value to them of a structure at this site (as far as I'm aware.) Are they even still looking for a permit since getting on the list? Would they like to park at this site? What are they doing now to meet their parking/commuting needs? Do they want a permit because it's cheaper than where they're currently parking? How much are they willing to pay? Even if that demand does currently exist, a new parking structure would be a 50-year-lifetime fix to a problem that might only exist for 5 years or less. More information is needed on the status of the waiting list before making a large long-term investment.

- Of course we need to support all the alternatives--and we do, but we need more parking too.

The two are at cross purposes, with the alternatives moving us toward sustainability and the construction of more parking spaces moving us away from it. If demand for more parking truly exists at this time, it's a demonstration that the investments in alternatives haven't been sufficient to offset the past and current subsidies for parking and single-occupant-vehicle use, and that the price of parking is too low. If we ultimately need a sustainable transit system (and we do), investing in the current unsustainable system is a waste of valuable resources, especially if it doesn't end up paying for itself.

- Providing parking downtown for potential employers will result in jobs to help Ann Arborites who are suffering through home foreclosures and other economic difficulties.

Building an underground parking structure isn't a quick fix. Construction will take time and result in a temporary decrease in parking supply in the short term. If parking really is that important and a crisis exists, there are other means of addressing it more quickly and directly. In the longer term, it's very difficult to estimate the value of downtown parking to specific individuals. (Also, it's debatable how much can be done locally to address problems that result from economic issues rooted more at the state and national levels.) From the perspective of an employer/commuter, a \$5/year go!Pass is far more affordable than a \$1500/year parking permit. Improving the affordability of downtown employment for the currently employed is far more within the DDA's influence than providing a solution to the others.

- Parking belongs underground.

Yes, for new, private developments for overnight storage, putting the parking spaces underground makes good sense. Also perhaps for new public developments (e.g., government facilities) where long-term parking is necessary. However, constructing underground parking to replace aboveground structures before their end of life would be a waste of existing resources (assuming that existing parking supply distribution is adequate, and even lacking that it would be questionable.) Likewise, existing resources (i.e., private surface lots, driveways, and public streets) should be maximized to meet parking needs before building a new structure.

- An underground parking structure at this site will be good for the library.

The 2008 library users survey results (<http://www.aadl.org/buildings/downtown/surveyresults> <<http://www.aadl.org/buildings/downtown/surveyresults>>) indicate that the addition of an underground structure would result in more people parking at the site than currently use the surface lot (see questions 10 and 16.) However, it's not clear to what extent those people would increase use of the library, nor to what extent they would increase their number of trips downtown. Parking supply was identified as a problem by only about 10 of the more than 6000 survey participants. (Question 1 asked about the importance of adequate

parking, not about the need for more.) Without more information we can't adequately assess the value of the proposed structure to library users (or to downtown in general, for that matter, at least not from the survey results.)

Library Lane seems to be desired by the library board and staff, but its creation doesn't necessarily rely on the underground structure.

Alternatively, if (as I've suggested we could explore) the transit center were moved to the library lot (possibly incorporating the Greyhound station) and a new library building were constructed on the current transit center site, the 4th & William structure (which typically has hundreds of available spaces during the day) could be used for library patron parking and 4th Avenue or a mid-block cut-through could be use for drop-off at the library.

- The proposed structure would result in 600+ new spaces for a cost of approximately \$50,000 per (constructed) space.

If the structure is planned to be managed at 85% capacity, the projected cost per used space would need to be increased by 15% to get a cost/benefit value as opposed to a number used for comparison purposes.

If parking demand declines during the lifetime of the structure, the cost per used space would increase (either for this structure or for others.)

- This structure could enable the development of a convention center.

Convention centers are historically financial losers (or so I've heard.) With the current economy and peak oil near if not already behind us, a convention center could be a very poor choice for downtown's future.

EXHIBIT B

Wolford, Louise

From: Hohnke, Carsten
Sent: Tuesday, February 17, 2009 7:56 PM
To: Greden, Leigh; Teall, Margie
Subject: RE: tomorrow...

In any case, I believe Sabra likely to propose postponement if no one else does.

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 7:55 PM
To: Teall, Margie; Hohnke, Carsten
Subject: RE: tomorrow..

She said she doesn't.

From: Teall, Margie
Sent: Tuesday, February 17, 2009 7:50 PM
To: Greden, Leigh; Hohnke, Carsten
Subject: RE: tomorrow...

She cares...

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 7:49 PM
To: Teall, Margie; Hohnke, Carsten
Subject: RE: tomorrow...

Yup. And against Hewitt and maybe Gunn. I told her that. She doesn't care.

From: Teall, Margie
Sent: Tuesday, February 17, 2009 7:49 PM
To: Greden, Leigh; Hohnke, Carsten
Subject: RE: tomorrow...

Doesn't that put her squarely against Sandi?

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 7:46 PM
To: Teall, Margie; Hohnke, Carsten
Subject: RE: tomorrow...

She's against 5th/Division and wants time to work on excluding that.
What is the rate setting mtng? Parking rates??

From: Teall, Margie
Sent: Tuesday, February 17, 2009 7:44 PM
To: Hohnke, Carsten

Cc: Greden, Leigh
Subject: RE: tomorrow...

But why?

From: Hohnke, Carsten
Sent: Tuesday, February 17, 2009 7:43 PM
To: Teall, Margie
Subject: RE: tomorrow...

Marcial

From: Teall, Margie
Sent: Tuesday, February 17, 2009 7:41 PM
To: Hohnke, Carsten
Subject: RE: tomorrow...

No. Why is anyone thinking about it?

From: Hohnke, Carsten
Sent: Tuesday, February 17, 2009 7:40 PM
To: Teall, Margie
Subject: RE: tomorrow...

I'll be there. Thanks for the reminder.

Are you supportive of postponing the structure?

From: Teall, Margie
Sent: Tuesday, February 17, 2009 7:39 PM
To: Hohnke, Carsten
Subject: tomorrow...

Are you thinking of going to the Rate Setting meeting tomorrow? I think it would be good for you to go (good for the committee!)

Zimmerman, Marylou

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 8:08 PM
To: Smith, Sandi
Subject: RE: .

Carsten said you might be up for it....!

From: Smith, Sandi
Sent: Tuesday, February 17, 2009 8:07 PM
To: Greden, Leigh
Subject: RE: .

Excellent!

Sandi Smith
Ann Arbor City Council
First Ward
734-302-3011

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 8:07 PM
To: Smith, Sandi
Subject: .

No postponement!

Zimmerman, Marylou

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 8:22 PM
To: Greden, Leigh
Subject: RE: 5th/Division

If it's in the original approved bonding, can they choose not to use it? Doesn't that cost us more money?

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 8:06 PM
To: Higgins, Marcia
Subject: RE: 5th/Division

They already have \$6m in their cash budget for 5th/Division. So, we're not actually adding a new \$6m. This simply shifts it from their cash fund to their bond fund, so they have the chance to bond for it if they see fit.

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 8:04 PM
To: Greden, Leigh
Subject: RE: 5th/Division

Why remove 6M from the project as being fiscally responsible and add in 6M for the 5th and Division site?

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 7:44 PM
To: Higgins, Marcia
Subject: RE: 5th/Division

I'll forward it

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 7:38 PM
To: Greden, Leigh
Subject: RE: 5th/Division

Where is the information that you were showing me upstairs located?

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 7:33 PM
To: Higgins, Marcia
Subject: 5th/Division

The bond resolutions, as written, don't include 5th/Division. Sandi plans to amend them to include it. Makes sense for you to vote no. But if Sandi's amendment passes, why vote against the whole project? I know I tease you about "Groome," but that's exactly what Groome did. It doesn't make sense to vote no against the much larger and greater project, simply b/c it include one piece you don't like. AND, the DDA can still postpone or even cancel the project, and thus not bond the money. But I think we're much better off if THEY make that decision, not us. After all, we already approved the project.

Wolford, Louise

From: Hohnke, Carsten

Sent: Tuesday, February 17, 2009 8:53 PM

To: Smith, Sandi

I forgot to mention that the full site plan remains. If you ask me, I'll clarify if you like.

6/19/2009

Zimmerman, Marylou

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 9:16 PM
To: Teall, Margie
Subject:

Isn't it nice when we script things? SB screws it up, but otherwise it's perfect.

Zimmerman, Marylou

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 9:18 PM
To: Higgins, Marcia
Subject: RE: 5th/Division

I've been working closely with them thru partnerships to make their budget work. Their suggestions for balancing their budget include "rebate the \$1.5m bond issuance fee to us" and "we'll jack up rates and blame you" and "we'll give you less than \$2m-per year." I say, "unacceptable. Delay projects and/or use demand based pricing."

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 9:16 PM
To: Greden, Leigh
Subject: RE: 5th/Division

What do you mean encourage them to delay or postpone? You lost me

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 8:39 PM
To: Higgins, Marcia
Subject: RE: 5th/Division

I've been pushing them to defer and/or cancel projects. They, of course, resist. But, a few people on DDA oppose 5th/Division and would entertain postponement and/or cancellation. Might be good to say on the record that you encourage them to delay or postpone... but, I think we look much better to both the DDA and the environmentalists if the DDA makes that decision, rather than us.

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 8:26 PM
To: Greden, Leigh
Subject: RE: 5th/Division

Thanks.

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 8:24 PM
To: Higgins, Marcia
Subject: RE: 5th/Division

This is a MAXIMUM authorization, not an actual amount. Recall PD/Courts-- the actual bond amount was different than the approved. So, we approve the max, which gives them flexibility, but they could issue far less than the authorized amount. This process costs us nothing. It actually saves money by avoiding multiple bonds (which require multiple underwritings).

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To: Higgins, Marcia
Subject: 5th/Division

The bond resolutions, as written, don't include 5th/Division. Sandi plans to amend them to include it. Makes sense for you to vote no. But if Sandi's amendment passes, why vote against the whole project? I know I tease you about "Groome," but that's exactly what Groome did. It doesn't make sense to vote no against the much larger and greater project, simply b/c it include one piece you don't like. AND, the DDA can still postpone or even cancel the project, and thus not bond the money. But I think we're much better off if THEY make that decision, not us. After all, we already approved the project.

Zimmerman, Marylou

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 9:26 PM
To: Greden, Leigh
Subject: RE: .

I'm not voting against the site plan. I probably with vote against Sandi's amendment.

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 9:23 PM
To: Higgins, Marcia
Subject:

Please don't vote with the moron.

Zimmerman, Marylou

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 9:27 PM
To: Greden, Leigh
Subject: RE: .

This is why we have time limits for speaking.

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 9:27 PM
To: Higgins, Marcia
Subject: RE: .

Neither does he. He's reading Karen's materials, and mis-stating it b/c he doesn't understand it.

From: Higgins, Marcia
Sent: Tuesday, February 17, 2009 9:26 PM
To: Greden, Leigh
Subject: RE: .

I also have not idea what he is talking about.

From: Greden, Leigh
Sent: Tuesday, February 17, 2009 9:23 PM
To: Higgins, Marcia
Subject: .

Please don't vote with the moron.

Bartha, Stephen

From: Carsten Hohnke [chohnke@a2gov.org]
Sent: Thursday, April 16, 2009 11:08 PM
To: Bartha, Stephen
Subject: [Fwd: RE: [Fwd: RE: 2/17- parking garage resolution]]

----- Original Message -----
Subject: RE: [Fwd: RE: 2/17- parking garage resolution]
Date: Sat, 7 Feb 2009 17:48:03 -0500
From: Greden, Leigh R. <greden@MillerCanfield.com>
To: 'Carsten Hohnke' <chohnke@a2gov.org>

Good plan.

-----Original Message-----
From: Carsten Hohnke [mailto:chohnke@a2gov.org]
Sent: Saturday, February 07, 2009 5:31 PM
To: Greden, Leigh R.
Subject: Re: [Fwd: RE: 2/17- parking garage resolution]

"... maybe call Susan now ..."

Agreed. Meeting with her on Monday.

Greden, Leigh R. wrote:

> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]

> -----Original Message-----
> From: Carsten Hohnke [mailto:chohnke@a2gov.org]
> Sent: Saturday, February 07, 2009 10:58 AM
> To: Greden, Leigh R.
> Subject: [Fwd: RE: 2/17- parking garage resolution]

> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]
> [REDACTED]

> ----- Original Message -----

> Subject: RE: 2/17- parking garage resolution
> Date: Fri, 6 Feb 2009 16:23:45 -0500
> From: Dempkowski, Angela A <ADempkowski@a2gov.org>
> To: Hohnke, Carsten <CHohnke@a2gov.org>
> CC: Greden, Leigh <LGreden@a2gov.org>, Fraser, Roger <RFraser@a2gov.org>

> References:

> [REDACTED]

> Here it is.

> -----Original Message-----

> From: Carsten Hohnke [mailto:chohnke@a2gov.org]
> Sent: Friday, February 06, 2009 4:18 PM
> To: Dempkowski, Angela A
> Cc: Greden, Leigh; Fraser, Roger; Beaudry, Jacqueline; Bowden (King),
> Anissa; Pollay, Susan
> Subject: Re: 2/17- parking garage resolution

> Specifically need it in Word, please. Thanks.

> -- Carsten

> Dempkowski, Angela A wrote:

>> Here is a pdf file. If you specifically need it in Word, let me know
>> and I'll get it. PS this has not been approved by Roger yet.

> -----

>> *From:* Greden, Leigh
>> *Sent:* Friday, February 06, 2009 4:02 PM
>> *To:* Fraser, Roger; Dempkowski, Angela A; Beaudry, Jacqueline;
>> Bowden

>> (King), Anissa; Pollay, Susan
>> *Cc:* Hohnke, Carsten
>> *Subject:* 2/17- parking garage resolution

>> Please send me and Carsten a Word copy of the resolution that will be
>> introduced on 2/17 authorizing the underground parking garage,
>> Thanks.

> --
> Carsten Hohnke
> Ann Arbor City Council
> Fifth Ward
> chohnke@a2gov.org
> (734) 369-4464

> --
> Carsten Hohnke
> Ann Arbor City Council

> Fifth Ward
> chohnke@a2gov.org
> (734) 369-4464

>
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> NOTICE TO PERSONS SUBJECT TO UNITED STATES TAXATION (MCPS)

>
> DISCLOSURE UNDER TREASURY CIRCULAR 230: The United States Federal tax
> advice, if any, contained in this document and its attachments may not
> be used or referred to in the promoting, marketing or recommending of
> any entity, investment plan or arrangement, nor is such advice
> intended or written to be used, and may not be used, by a taxpayer for
> the purpose of avoiding Federal tax penalties.

>

>
>

Carsten Hohnke
Ann Arbor City Council
Fifth Ward
chohnke@a2gov.org
(734) 369-4464

NOTICE TO PERSONS SUBJECT TO UNITED STATES TAXATION (MCPS)

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purpose of avoiding Federal tax penalties.

Carsten Hohnke
Ann Arbor City Council
Fifth Ward
chohnke@a2gov.org
(734) 369-4464

Bartha, Stephen

From: Carsten Hohnke [chohnke@a2gov.org]
Sent: Thursday, April 16, 2009 11:09 PM
To: Bartha, Stephen
Subject: [Fwd: RE: 2/17- parking garage resolution]

Attachments: Library - Authorization to Issue.doc; Library Lot - NOI.doc



Library -
Authorization to Iss..



Library Lot -
NOI.doc (53 KB)

----- Original Message -----

Subject: RE: 2/17- parking garage resolution
Date: Tue, 10 Feb 2009 07:16:37 -0500
From: Crawford, Tom <TCrawford@a2gov.org>
To: Hohnke, Carsten <CHohnke@a2gov.org>, Greden, Leigh <LGreden@a2gov.org>
CC: Dempkowski, Angela A <ADempkowski@a2gov.org>, Fraser, Roger <RFraser@a2gov.org>

[REDACTED]

Attached are the resolutions you requested in Word.

[REDACTED]

-----Original Message-----

From: Hohnke, Carsten
Sent: Monday, February 09, 2009 8:10 PM
To: Greden, Leigh; Crawford, Tom
Cc: Dempkowski, Angela A; Fraser, Roger
Subject: RE: 2/17- parking garage resolution

[REDACTED]

-----Original Message-----

From: Greden, Leigh
Sent: Monday, February 09, 2009 8:07 PM
To: Crawford, Tom; Hohnke, Carsten
Cc: Dempkowski, Angela A; Fraser, Roger
Subject: RE: 2/17- parking garage resolution

[REDACTED]

-----Original Message-----

From: Crawford, Tom
Sent: Monday, February 09, 2009 5:31 PM
To: Hohnke, Carsten
Cc: Dempkowski, Angela A; Greden, Leigh; Fraser, Roger

Subject: Re: 2/17- parking garage resolution

Carsten,

I have a meeting tomorrow morning with DDA where I expect it to change.
I assume you'll want latest version.

Thanks,
Tom Crawford

On Feb 9, 2009, at 5:20 PM, "Carsten Hohnke" <chohnke@a2gov.org> wrote:

> Thanks, Angela: Please also send the bonding resolution when
> available, please.

>
> Dempkowski, Angela A wrote:
>> Here it is.

>> -----Original Message-----

>> From: Carsten Hohnke [mailto:chohnke@a2gov.org] Sent: Friday,
>> February 06, 2009 4:18 PM

>> To: Dempkowski, Angela A

>> Cc: Greden, Leigh; Fraser, Roger; Beaudry, Jacqueline; Bowden (King),

>> Anissa; Pollay, Susan

>> Subject: Re: 2/17- parking garage resolution

>>

>> Specifically need it in Word, please. Thanks.

>>

>> -- Carsten

>>

>> Dempkowski, Angela A wrote:

>>

>>> Here is a pdf file. If you specifically need it in Word, let me know

>>> and I'll get it. PS this has not been approved by Roger yet.

>>>

>>>

>>>

>> ---

>>

>>

>>> *From:* Greden, Leigh

>>> *Sent:* Friday, February 06, 2009 4:02 PM

>>> *To:* Fraser, Roger; Dempkowski, Angela A; Beaudry, Jacqueline;

>>> Bowden

>>>

>>>

>>>

>>> (King), Anissa; Pollay, Susan

>>> *Cc:* Hohnke, Carsten

>>> *Subject:* 2/17- parking garage resolution

>>>

>>> Please send me and Carsten a Word copy of the resolution that will
>>> be introduced on 2/17 authorizing the underground parking garage.

>>> Thanks.

>>>

>>>

>>

>>

>

> --

> Carsten Hohnke

> Ann Arbor City Council

> Fifth Ward

> chohnke@a2gov.org

> (734) 369-4464.

Horning, Matthew

From: Crawford, Tom
Sent: Tuesday, February 10, 2009 7:42 AM
To: Horning, Matthew
Subject: FW: Draft Summary for Library Lot Project
Attachments: 2-9-08 - For Discussion Only.xlsx; Library Lot.xlsx

Latest status. I will be at DDA this morning to working on this. Meeting with the Board members at 9:30. There's obviously a lot that has changed since you were last involved but you're welcome to attend.

From: Joseph Morehouse [mailto:JMorehouse@a2dda.org]
Sent: Monday, February 09, 2009 2:24 PM
To: Crawford, Tom
Subject: RE: Draft Summary for Library Lot Project

Tom,

[REDACTED] I have attached you Library Lot description and a new 10-Year plan that postpones the project for one year per your request.

Thanks,

Joe

From: Crawford, Tom [mailto:TCrawford@a2gov.org]
Sent: Sunday, February 08, 2009 8:31 PM
To: Joseph Morehouse
Subject: Draft Summary for Library Lot Project

Joe,

[REDACTED]

costs. I will adjust the plan

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Crawford, Tom

From: Joseph Morehouse [JMorehouse@a2dda.org]
Sent: Friday, January 09, 2009 11:30 AM
To: Crawford, Tom
Subject: FW: Library Lot Parking Deck Memo
Attachments: Treasury MEMO - DDA 5th Ave Bonds .pdf

Tom,

[REDACTED] Thank you.

Could you confirm that the City and its bond counsel and advisors have all the information from the DDA they need for the bond process to continue?

If there is anything else you need please let me know.

Thanks,

Joe

From: Crawford, Tom [mailto:TCrawford@a2gov.org]
Sent: Tuesday, January 06, 2009 5:20 PM
To: Susan Pollay
Cc: Fraser, Roger; Hieftje, John
Subject: Library Lot Parking Deck Memo

Susan,

Can you forward the attached memo to Jennifer Hall? I've written to you and her but do not have her email address.

Thanks,
Tom Crawford
CFO, City of Ann Arbor
734-994-2909

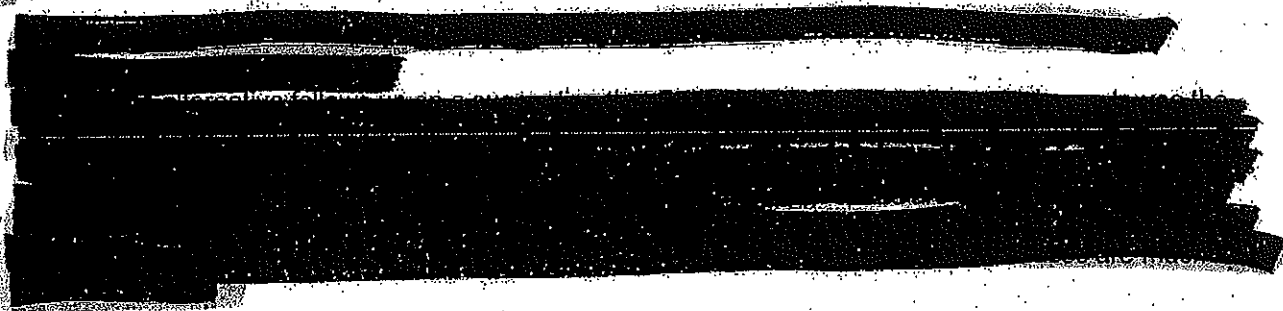
Bartha, Stephen

From: Teall, Margie
Sent: Thursday, April 16, 2009 4:30 PM
To: Schopieray, Christine
Subject: FW: Resolutions: S. 5th Ave Parking Structure & 5th/Division-Phase I
Attachments: RES 5th-Division approve Phase I budget-details 090308.doc; S. 5th Ave Structure Budget & 5th-Division Approvals 090308.pdf; RES S. 5th Ave Structure Budget-Project Approval 090308.doc

From: Susan Pollay [mailto:SPollay@a2dda.org]
Sent: Monday, August 18, 2008 4:55 PM
To: Bonnie Bona (bsbona@aol.com); Daveydina2@comcast.net; jsantihall@gmail.com; John Mouat; John Splitt; gunnl@ewashtenaw.org; Leigh Greden; Lowenstein, Joan; Teall, Margie; Rene Greff; Roger Hewitt; Sandi Smith
Subject: Resolutions: S. 5th Ave Parking Structure & 5th/Division-Phase I

Hi all. In follow up to our shared Capital Improvements/Partnerships Committee meetings on Wednesday here are drafts of the two resolutions for the Fifth & Division/Phase I project and the S. Fifth Avenue parking structure project. Any/all edits would be warmly appreciated, as I think I got the gist of what was talked about, but may have missed some nuances along the way.

Also attached are two memos/graphs from Joe Morehouse showing two different ways we could pay for these two projects, while never allowing our TIF fund balance to dip below \$1 million.



Whichever alternative the DDA opts to pursue, Joe is assuming that the parking structure and the 5th/Division projects will be bonded.

Please let me know if I can answer any questions about the two financial scenarios. Also, any/all edits to the resolutions would be terrific.

Many thanks to all!
Susan

Crawford, Tom

From: Greden, Leigh R. [greden@MillerCanfield.com]
Sent: Friday, February 13, 2009 4:37 PM
To: Crawford, Tom; Hohnke, Carsten (Westpole)
Subject: Updates from Hewitt

1. As I expected, [REDACTED]

2. [REDACTED]

Comments?

Leigh R. Greden
Miller, Canfield, Paddock & Stone
101 N. Main, 7th Floor
Ann Arbor, MI 48104
Voice: 734-668-7749
Fax: 734-747-7147
Email: Greden@millercanfield.com

NOTICE TO PERSONS SUBJECT TO UNITED STATES TAXATION (MCPS)

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Crawford, Tom

From: Crawford, Tom
Sent: Tuesday, February 17, 2009 7:50 PM
To: Greden, Leigh
Cc: Hohnke, Carsten
Subject: Re: DDA Deck

No response from my call yesterday.

Thanks,
Tom Crawford

On Feb 17, 2009, at 1:46 PM, "Greden, Leigh" <LGreden@a2gov.org> wrote:

What have we heard re: the status of the 1st/Washington project?

From: Crawford, Tom
Sent: Tue 2/17/2009 1:14 PM
To: Greden, Leigh; Hohnke, Carsten
Subject: DDA Deck

Leigh/Carsten,

I'm almost done with the amendment for Sandi and will be sending to y'all as well in a few minutes.



Thanks,

Tom

Crawford, Tom

From: Greden, Leigh R. [greden@MillerCanfield.com]
Sent: Tuesday, February 10, 2009 1:09 PM
To: Hohnke, Carsten (Westpole); Crawford, Tom
Subject: Call with Hewitt

He says they have identified many things to close the budget gap, including: (1) setting the reserve at 15% instead of 20% (which he supports), (2) doing more demand based pricing, (3) some evening enforcement, (4) delaying Wayfinding, and (5) raising rates on meter bags.

[REDACTED]

Conclusion: [REDACTED]

Leigh R. Greden
Miller, Canfield, Paddock & Stone
101 N. Main, 7th Floor
Ann Arbor, MI 48104
Voice: 734-668-7749
Fax: 734-747-7147
Email: Greden@millercanfield.com

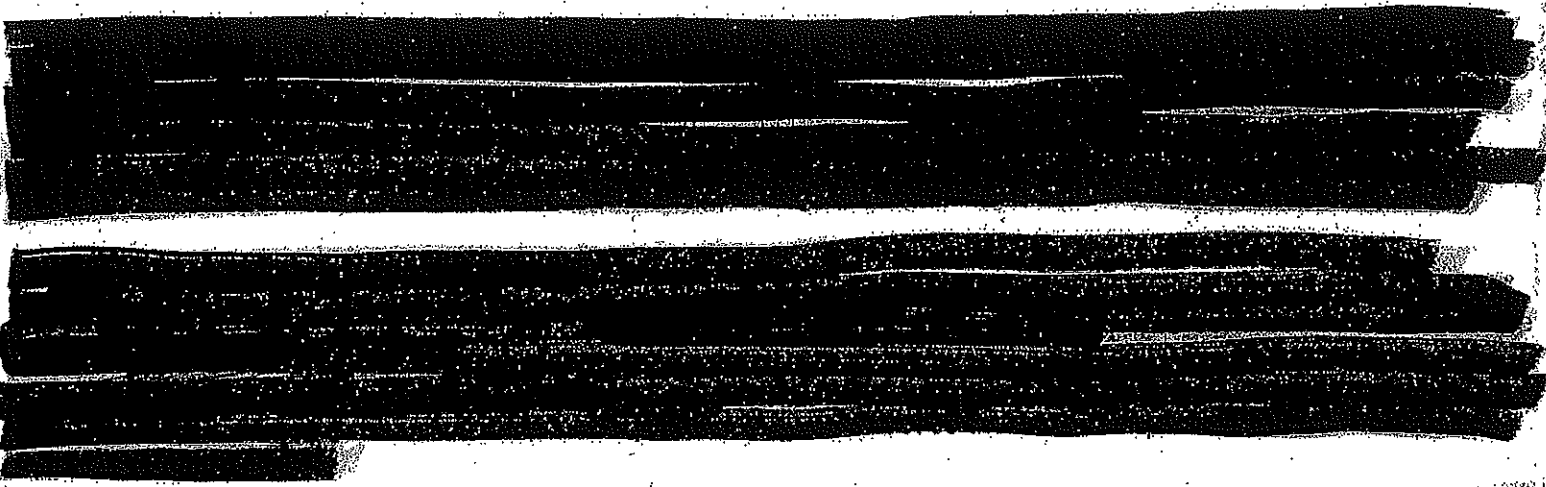
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Heatley, Alison

From: Hupy, Craig
Sent: Tuesday, October 21, 2008 9:40 AM
To: McCormick, Sue
Cc: Cheng, Christopher; Harrison, Venita; Heatley, Alison
Subject: FW: DDA - South Fifth Ave Parking Structure 2.doc
Importance: High
Attachments: DDA - South Fifth Ave Parking Structure 2.doc

Attached are Alison's comments on the "Library Lot Parking Structure", I would like to take this time to highlight two thoughts/comments.



From: Heatley, Alison
Sent: Monday, October 20, 2008 2:54 PM
To: Hupy, Craig
Subject: FW: DDA - South Fifth Ave Parking Structure 2.doc

From: Heatley, Alison
Sent: Friday, October 17, 2008 3:39 PM
To: Cheng, Christopher
Subject: DDA - South Fifth Ave Parking Structure 2.doc

Chris, I need to work on the last water main comment more, but at least you get the gist.

Bartha, Stephen

From: Hieftje, John
Sent: Monday, March 02, 2009 10:09 AM
To: Smith, Sandi; Pollay, Susan
Subject: FW: Letter from Noah Hall
Attachments: DRAFT GLELC Ann Arbor Parking Garage MEPA Letter.pdf

Sandi and Susan:

This is a draft we received from a third party. This letter has not been officially received by the city but I wanted you to be aware of it given the possible impact on DDA and city business.

[REDACTED]

We should talk after you have had a chance to read it.

Thanks,

John

EXHIBIT C

The Great Lakes Environmental Law Center

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

440 Burroughs Street, Suite 111
Detroit, Michigan 48202
www.greatlakeslaw.org

March 27, 2009

Hand Delivered

FOIA Officer
c/o Mayor John Hieftje
City of Ann Arbor
Guy C. Larcom, Jr. Municipal Building
100 N. Fifth Avenue
Ann Arbor, MI 48107

Re: Freedom of Information Act Request – South Fifth Avenue Parking Garage

Mayor Hieftje:

The Great Lakes Environmental Law Center seeks all records relating to the City Council's Resolution to Approve South Fifth Avenue Parking Garage and Street Improvements Site Plan (319 South Fifth Avenue), Enactment No: R-09-061, passed February 17, 2009, along with all records relating to the bonding and financing of the proposed South Fifth Avenue Parking Garage. We are submitting this request to obtain records that will allow the Great Lakes Environmental Law Center and members of the public to fully understand the City's decision and future actions. The Great Lakes Environmental Law Center makes this request pursuant to the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, M.C.L. § 15.231 et seq.

For purposes of this request, "records" includes information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final or

otherwise. All such records are included in this request if they are in the possession of or otherwise under the control of the City of Ann Arbor.

Specifically, this request includes any records dated July 1, 2008 to the present consisting of, or recounting, describing, or otherwise relating to, communications to, from, and between City Council members, City of Ann Arbor employees, and representatives of the City of Ann Arbor concerning or otherwise relating to the South Fifth Avenue Parking Garage, including all e-mail communications and other records made by City Council members before, during, and after City Council's February 17, 2009 public meeting.

Exempt Records

Should you decide to invoke a FOIA exemption as the basis for withholding any record responsive to this request, please include in your full or partial denial letter sufficient information for the Great Lakes Environmental Law Center to appeal the denial pursuant to M.C.L. § 15.235(4)(a). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Great Lakes Environmental Law Center.

Format of Records Requested

To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Fee Waiver Request

The Great Lakes Environmental Law Center requests that you waive all fees in connection with this request as provided by MCL § 15.234(1) (waiver of fee is appropriate where search for and provision of copies of the public record can be considered as primarily benefiting the general public). As little state case law exists about the proper interpretation of Michigan's fee waiver provision, federal law on the parallel provision is instructive. *See Bredemeier v Kentwood Board of Education*, 95 Mich. App. 767, 291 N.W.2d 199 (1980) (similarities between the Federal FOIA and

Michigan FOIA make construction of the federal act persuasive in construction of the state FOIA). A fee waiver therefore is appropriate pursuant to MCL 15.234(1), as disclosure of the requested information is both “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and “is not primarily in the commercial interest of the requester” under the parallel federal provision. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. 2.19(b)(1) and (2).

The Great Lakes Environmental Law Center will use the information to contribute significantly to public understanding of the government’s operations and activities. A fee waiver is appropriate in this case for several reasons. First, the records requested concern “the operations or activities of the government.” 43 C.F.R. 2.19(b)(1). In addition, the records requested are “likely to contribute” to public understanding of the South Fifth Avenue Parking Garage. 43 C.F.R. 2.19(b)(1). The specific set of records sought includes materials generated by and including communications between the City and outside parties that have not yet been made public. These materials will shed light on the City’s decision.

This request is also likely to contribute to the “public understanding,” *id.*, as the Great Lakes Environmental Law Center can interpret and disseminate information obtained pursuant to FOIA to a broad audience of persons. The Great Lake Environmental Law Center will make all records received available to the public. Finally, this request is likely to contribute “significantly” to the public understanding of the South Fifth Avenue Parking Garage as it relates to the Michigan Environmental Protection Act and other applicable laws. The Great Lakes Environmental Law Center is a non-profit organization registered as a charitable organization in Michigan, with no commercial interest in obtaining the requested information.

Willingness to Pay Fees Under Protest

While a fee waiver should be granted for the reasons set forth above, the Great Lakes Environmental Law Center is seeking these records regardless of the City’s ultimate decision on the fee waiver request. The Great Lakes Environmental Law Center thus is willing to pay fees in keeping with the applicable statutory and regulatory requirements, if necessary and under protest, to enable the timely delivery of the records. Fees must be limited to actual costs of labor and copying, and the means for copying must be the most economical available. M.C.L. § 15.234(1) and (3). Furthermore, fees may only be assessed based on procedures and guidelines published by the City. *Id.* at (3). We therefore request that City identify the procedures and guidelines under which it assesses fees, and provide an itemized list of fees charged and the justification for them in order to establish compliance with the statutory requirements. In addition, any payment of fees does not constitute waiver of the Great Lakes Environmental Law Center’s right to seek administrative or judicial review of any denial of its fee waiver request. Please contact me before undertaking any action that would result in a fee charge in excess of one hundred dollars.

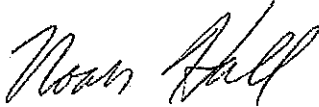
Record Delivery

Pursuant to M.C.L. § 15.235(2), we expect a response to this request within 5 business days. We request the City, in responding to this request, to comply with all relevant deadlines and other obligations set forth in the Michigan FOIA. To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Please produce the requested records on a rolling basis; at no point should the search for – or deliberation concerning – certain records delay the production of others that the City has already retrieved and elected to produce.

Please contact me so that I can pick up these records as soon as possible. If you find that this request is unclear in any way please contact me immediately so I can clarify the request or otherwise expedite and simplify your efforts to comply.

Sincerely,



Noah Hall
Executive Director
Great Lakes Environmental Law Center
(734) 646-1400
nhall@wayne.edu

The Great Lakes Environmental Law Center

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

440 Burroughs Street, Suite 111, Box 70
Detroit, Michigan 48202
www.greatlakeslaw.org

April 23, 2009

Via E-Mail to Steve Bartha – sbartha@a2gov.org

Steve Bartha
City FOIA Coordinator
City of Ann Arbor
Guy C. Larcom, Jr. Municipal Building
100 N. Fifth Avenue
Ann Arbor, MI 48107

Cc: Mayor John Hieftje (jhieftje@a2gov.org)

Re: Freedom of Information Act Request – February 17, 2009 City Council Meeting

Mr. Bartha:

The Great Lakes Environmental Law Center seeks **all records produced, prepared, or otherwise created by Ann Arbor City Council members during the City Council's February 17, 2009 meeting**. We are submitting this request to obtain records that will allow the Great Lakes Environmental Law Center and members of the public to fully understand the City Council meeting and resulting decisions. The Great Lakes Environmental Law Center makes this request pursuant to the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, MCL 15.231 et seq.

For purposes of this request, "records" includes information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, emails, instant messages, text messages, drawings, graphs, charts, photographs, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All such records are included in this request if they are in the possession of or otherwise under the control of the City of Ann Arbor.

This request is not limited to records relating to any specific agenda item from the February 17, 2009 City Council Meeting.

To minimize the city's costs in producing these records, please exclude the following records from this request:

1. Records generated during any closed session (as defined in the Michigan Open Meetings Act, MCL 15.262(c)) of the February 17, 2009 City Council Meeting.
2. The meeting minutes and other records already made available to the public pursuant to the Michigan Open Meetings Act, MCL 15.261 et seq. and/or city policy on the city's website (<http://a2gov.legistar.com>).

Exempt Records

Should you decide to invoke a FOIA exemption as the basis for withholding any record responsive to this request, please include in your full or partial denial letter sufficient information for the Great Lakes Environmental Law Center to appeal the denial pursuant to M.C.L. § 15.235(4)(a). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Great Lakes Environmental Law Center.

Format of Records Requested

To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Fee Waiver Request

The Great Lakes Environmental Law Center requests that you waive all fees in connection with this request as provided by MCL § 15.234(1) (waiver of fee is

appropriate where search for and provision of copies of the public record can be considered as primarily benefiting the general public). The Great Lakes Environmental Law Center will use the information to contribute significantly to public understanding of City Council members' deliberations during a public open meeting. The Great Lake Environmental Law Center will make all records received available to the public. The Great Lakes Environmental Law Center is a non-profit organization registered as a charitable organization in Michigan, with no commercial interest in obtaining the requested information.

Willingness to Pay Fees Under Protest

While a fee waiver should be granted for the reasons set forth above, the Great Lakes Environmental Law Center is seeking these records regardless of the City's ultimate decision on the fee waiver request. The Great Lakes Environmental Law Center thus is willing to pay fees in keeping with the applicable statutory and regulatory requirements, if necessary and under protest, to enable the timely delivery of the records. Fees must be limited to actual costs of labor and copying, and the means for copying must be the most economical available. M.C.L. § 15.234(1) and (3). Furthermore, fees may only be assessed based on procedures and guidelines published by the City. *Id.* at (3). We therefore request that City identify the procedures and guidelines under which it assesses fees, and provide an itemized list of fees charged and the justification for them in order to establish compliance with the statutory requirements. In addition, any payment of fees does not constitute waiver of the Great Lakes Environmental Law Center's right to seek administrative or judicial review of any denial of its fee waiver request. Please contact me before undertaking any action that would result in a fee charge in excess of one hundred dollars.

Record Delivery

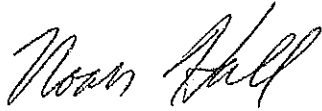
Pursuant to M.C.L. § 15.235(2), we expect a response to this request within 5 business days. We request the City, in responding to this request, to comply with all relevant deadlines and other obligations set forth in the Michigan FOIA. To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Please produce the requested records on a rolling basis; at no point should the search for – or deliberation concerning – certain records delay the production of others that the City has already retrieved and elected to produce.

Please contact me so that I can pick up these records as soon as possible. If you find that this request is unclear in any way please contact me immediately so I can clarify the request or otherwise expedite and simply your efforts to comply.

*Great Lakes Environmental Law Center
April 23, 2009 FOIA Request to the City of Ann Arbor
Re February 17, 2009 City Council Meeting*

Sincerely,

A handwritten signature in cursive script that reads "Noah Hall".

Noah Hall
Executive Director
Great Lakes Environmental Law Center
(734) 646-1400
nhall@wayne.edu

The Great Lakes Environmental Law Center

*Protecting the world's greatest freshwater resource
and the communities that depend upon it*

440 Burroughs Street, Suite 111, Box 70
Detroit, Michigan 48202
www.greatlakeslaw.org

May 4, 2009

Via E-Mail to Steve Bartha – sbartha@a2gov.org

Steve Bartha
City FOIA Coordinator
City of Ann Arbor
Guy C. Larcom, Jr. Municipal Building
100 N. Fifth Avenue
Ann Arbor, MI 48107

Re: Freedom of Information Act Request – March 16, 2009 and March 2, 2009 City Council Meetings

Mr. Bartha:

The Great Lakes Environmental Law Center seeks **all records produced, prepared, or otherwise created by Ann Arbor City Council members during the City Council's March 16, 2009 and March 2, 2009 meetings.** We are submitting this request to obtain records that will allow the Great Lakes Environmental Law Center and members of the public to fully understand the City Council meeting and resulting decisions. The Great Lakes Environmental Law Center makes this request pursuant to the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, MCL 15.231 et seq.

For purposes of this request, "records" includes information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, emails, instant messages, text messages, drawings, graphs, charts, photographs, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All such records are included in this request if they are in the possession of or otherwise under the control of the City of Ann Arbor.

This request is not limited to records relating to any specific agenda items from the March 16, 2009 and March 2, 2009 City Council Meetings.

To minimize the city's costs in producing these records, please exclude the following records from this request:

1. Records generated during any closed session (as defined in the Michigan Open Meetings Act, MCL 15.262(c)) of the February 17, 2009 City Council Meeting.
2. The meeting minutes and other records already made available to the public pursuant to the Michigan Open Meetings Act, MCL 15.261 et seq. and/or city policy on the city's website (<http://a2gov.legistar.com>).

Exempt Records

Should you decide to invoke a FOIA exemption as the basis for withholding any record responsive to this request, please include in your full or partial denial letter sufficient information for the Great Lakes Environmental Law Center to appeal the denial pursuant to M.C.L. § 15.235(4)(a). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Great Lakes Environmental Law Center.

Format of Records Requested

To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Fee Waiver Request

The Great Lakes Environmental Law Center requests that you waive all fees in connection with this request as provided by MCL § 15.234(1) (waiver of fee is appropriate where search for and provision of copies of the public record can be considered as primarily benefiting the general public). The Great Lakes Environmental Law Center will use the information to contribute significantly to public understanding of City Council members' deliberations during a public open meeting. The Great Lakes Environmental Law Center will make all records received available to the public. The Great Lakes Environmental Law Center is a non-profit organization registered as a charitable organization in Michigan, with no commercial interest in obtaining the requested information.

Willingness to Pay Fees Under Protest

While a fee waiver should be granted for the reasons set forth above, the Great Lakes Environmental Law Center is seeking these records regardless of the City's ultimate decision on the fee waiver request. The Great Lakes Environmental Law Center thus is willing to pay fees in keeping with the applicable statutory and regulatory requirements, if necessary and under protest, to enable the timely delivery of the records. Fees must be limited to actual costs of labor and copying, and the means for copying must be the most economical available. M.C.L. § 15.234(1) and (3). Furthermore, fees may only be assessed based on procedures and guidelines published by the City. *Id.* at (3). We therefore request that City identify the procedures and guidelines under which it assesses fees, and provide an itemized list of fees charged and the justification for them in order to establish compliance with the statutory requirements. In addition, any payment of fees does not constitute waiver of the Great Lakes Environmental Law Center's right to seek administrative or judicial review of any denial of its fee waiver request. Please contact me before undertaking any action that would result in a fee charge in excess of one hundred dollars.

Record Delivery

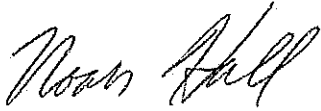
Pursuant to M.C.L. § 15.235(2), we expect a response to this request within 5 business days. We request the City, in responding to this request, to comply with all relevant deadlines and other obligations set forth in the Michigan FOIA. To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible, including but not limited to records that are stored or maintained in electronic format. We will provide a USB drive or other media storage device for the records at our expense.

Please produce the requested records on a rolling basis; at no point should the search for – or deliberation concerning – certain records delay the production of others that the City has already retrieved and elected to produce.

*Great Lakes Environmental Law Center
May 4, 2009 FOIA Request to the City of Ann Arbor
Re March 16, 2009 and March 2, 2009 City Council Meetings*

Please contact me so that I can pick up these records as soon as possible. If you find that this request is unclear in any way please contact me immediately so I can clarify the request or otherwise expedite and simplify your efforts to comply.

Sincerely,

A handwritten signature in black ink that reads "Noah Hall". The signature is written in a cursive style with a large, prominent "N" and "H".

Noah Hall
Executive Director
Great Lakes Environmental Law Center
(734) 646-1400
nhall@wayne.edu

EXHIBIT D



CITY OF ANN ARBOR, MICHIGAN

100 North Fifth Avenue, P.O. Box 8647, Ann Arbor, Michigan 48107-8647

www.a2gov.org

Community Services Area

Administration (734) 794-6210
Community Development Services (734) 622-9025
Parks & Recreation Services (734) 794-6230
Planning & Development Services - Building (734) 794-6267
Planning & Development Services - Planning (734) 794-6265

April 20, 2009

Noah Hall
Executive Director
Great Lakes Environmental Law Center

Subject: Freedom of Information Act Request dated March 27, 2009
09-067 Hall

Dear Mr. Hall:

I am responding to your request under the Michigan Freedom of Information Act, dated March 27, 2009, received March 30, 2009 and extended April 2, 2009, for "all records relating to the City Council's Resolution to Approve South Fifth Avenue Parking Garage and Street Improvements Site Plan (319 South Fifth Avenue), Enactment No: R-09-061, passed February 17, 2009, along with all records relating to the bonding and financing of the proposed South Fifth Avenue Parking Garage."

The information you have requested has been granted in part and denied in part. The information has been denied to the extent that the following redactions have occurred:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a)
2. Documents and portions of documents that constitute communications from attorneys in the City Attorney's Office to City staff and/or Council members. These documents are subject to the attorney-client privilege and/or work product privilege. MCL 15.243(1)(g), (h)
3. Communications and notes between City staff that are of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action and for which the public interest in encouraging frank communication between officials and employees of public bodies outweighs the public interest in disclosure. MCL 15.243(1)(m)

The City does not warrant or guarantee the accuracy of the information provided. Rather, it provides the documents only to comply in good faith with the Michigan Freedom of Information Act, and not for any other purpose.

If you receive written notice that your request has been denied, in whole or in part, under Section 10 of the Act, you may, at your option either: (1) submit to the City Administrator a written appeal that specifically states the word "appeal" and identifies the reason(s) for reversal of the disclosure denial; or (2) file a lawsuit in the circuit court to compel the City's disclosure of the record. If after judicial review, the circuit court determines that the City has not complied with the Act, you may be awarded reasonable

attorneys' fees and damages as specified under the Act.

The Michigan Freedom of Information Act specifically provides that a public body may charge a fee for searching for and copying a public record. The cost for copying the records is \$ payable to the City of Ann Arbor.

The breakdown of the copying costs is as follows:

8 1/2" x 11" copies	464 pgs @ .05/page	\$23.20
8 1/2" x 14" copies	6 pgs @ .07/page	\$ 0.42
11" x 17" copies	1 pg @ .25/page	\$ 0.25
Staff-time	7 hrs @ \$12.02/hr	<u>\$84.14</u>
		\$108.81

Upon receipt of this amount, the documents will be released to you. Your documents may be picked up in the Community Services Office (Sixth Floor, City Hall), Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m., or alternatively, if requested, the documents will be mailed to you upon receipt of the stated cost plus postage (include additional cost of \$6.50 for postage). Please mail your check to Steve Bartha at the address noted above.

If you have any questions concerning this response, please contact Steve Bartha, City FOIA Coordinator, (734)794-6210, ext. 42198.

Sincerely,



Jayne S. Miller
Community Services Administrator



CITY OF ANN ARBOR, MICHIGAN

100 North Fifth Avenue, P.O. Box 8647, Ann Arbor, Michigan 48107-8647

www.a2gov.org

Community Services Area

Administration (734) 794-6210
Community Development Services (734) 622-9025
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Planning & Development Services - Building (734) 794-6267
Planning & Development Services - Planning (734) 794-6265

April 30, 2009

Noah Hall
Executive Director
Great Lakes Environmental Law Center

Subject: Freedom of Information Act Request dated April 23, 2009
09-080 Hall

Dear Mr. Hall:

I am responding to your request under the Michigan Freedom of Information Act, dated April 23, 2009. Your request for "all records produced, prepared, or otherwise created by Ann Arbor City Council members during the City Council's February 17, 2009 meeting" is granted in part and denied in part. The information has been denied to the extent that the following redactions have occurred:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a)
2. Documents and portions of documents that constitute communications from attorneys in the City Attorney's Office to City staff and/or Council members. These documents are subject to the attorney-client privilege and/or work product privilege. MCL 15.243(1)(g), (h)

The City does not warrant or guarantee the accuracy of the information provided. Rather, it provides the documents only to comply in good faith with the Michigan Freedom of Information Act, and not for any other purpose.

Please note that for cost savings, the City has attempted to omit any records released as part of your previous request. Additionally, the City has attempted to avoid producing multiple copies of a document when more than one Council member produced it. Also, because of redactions, the City was unable to simply forward these documents electronically.

If you receive written notice that your request has been denied, in whole or in part, under Section 10 of the Act, you may, at your option either: (1) submit to the City Administrator a written appeal that specifically states the word "appeal" and identifies the reason(s) for reversal of the disclosure denial; or (2) file a lawsuit in the circuit court to compel the City's disclosure of the record. If after judicial review, the circuit court determines that the City has not complied with the Act, you may be awarded reasonable attorneys' fees and damages as specified under the Act.

The Michigan Freedom of Information Act specifically provides that a public body may charge a fee for searching for and copying a public record. The cost for copying the records is \$7.86 payable to the City of Ann Arbor.

The breakdown of the copying costs is as follows:

8 1/2" x 11" copies	37 pgs @ .05/page	\$1.85
Staff-time	30 min @ \$12.02/hr	<u>\$6.01</u>
		\$7.86

Upon receipt of this amount, the documents will be released to you. Your documents may be picked up in the Community Services Office (Sixth Floor, City Hall), Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m., or alternatively, if requested, the documents will be mailed to you upon receipt of the stated cost plus postage (include additional cost of \$4.80 for postage). Please mail your check to Steve Bartha at the address noted above.

If you have any questions concerning this response, please contact Steve Bartha, City FOIA Coordinator, (734)794-6210, ext. 42198.

Sincerely,



Jayne S. Miller
Community Services Administrator



CITY OF ANN ARBOR, MICHIGAN

100 North Fifth Avenue, P.O. Box 8647, Ann Arbor, Michigan 48107-8647

www.a2gov.org

Community Services Area

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Planning & Development Services - Planning (734) 794-6265

May 12, 2009

Noah Hall
Executive Director
Great Lakes Environmental Law Center

Subject: Freedom of Information Act Request dated May 4, 2009
09-083 Hall

Dear Mr. Hall:

I am responding to your request under the Michigan Freedom of Information Act, dated May 4, 2009 and received on May 5, 2009. Your request for "all records produced, prepared, or otherwise created by Ann Arbor City Council members during the City Council's March 2, 2009 and March 16, 2009 meetings" is granted in part and denied in part. The information has been denied to the extent that the following redactions have occurred:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a)
2. Documents and portions of documents that constitute communications from attorneys in the City Attorney's Office to City staff and/or Council members. These documents are subject to the attorney-client privilege and/or work product privilege. MCL 15.243(1)(g), (h)
3. Communications and notes between City staff that are of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action and for which the public interest in encouraging frank communication between officials and employees of public bodies outweighs the public interest in disclosure. MCL 15.243(1)(m)

The City does not warrant or guarantee the accuracy of the information provided. Rather, it provides the documents only to comply in good faith with the Michigan Freedom of Information Act, and not for any other purpose.

If you receive written notice that your request has been denied, in whole or in part, under Section 10 of the Act, you may, at your option either: (1) submit to the City Administrator a written appeal that specifically states the word "appeal" and identifies the reason(s) for reversal of the disclosure denial; or (2) file a lawsuit in the circuit court to compel the City's disclosure of the record. If after judicial review, the circuit court determines that the City has not complied with the Act, you may be awarded reasonable attorneys' fees and damages as specified under the Act.

The Michigan Freedom of Information Act specifically provides that a public body may charge a fee for searching for and copying a public record. The cost for copying the records is \$9.21 payable to

the City of Ann Arbor.

The breakdown of the copying costs is as follows:

8 1/2" x 11" copies	64 pgs @ .05/page	\$3.20
Staff-time	30 min @ \$12.02/hr	<u>\$6.01</u>
		\$9.21

Upon receipt of this amount, the documents will be released to you. Your documents may be picked up in the Community Services Office (Sixth Floor, City Hall), Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m., or alternatively, if requested, the documents will be mailed to you upon receipt of the stated cost plus postage (include additional cost of \$4.80 for postage). Please mail your check to Steve Bartha at the address noted above.

If you have any questions concerning this response, please contact Steve Bartha, City FOIA Coordinator, (734)794-6210, ext. 42198.

Sincerely,



Jayne S. Miller
Community Services Administrator

EXHIBIT E

Efficient Mobility
Walking
Bicycling
AATA Ridership
Commuting Behavior
Vehicle Miles Traveled
Single Occupancy Vehicle Trips

Select Environmental Goal

Select an Indicator Topic

government

Select Service Unit

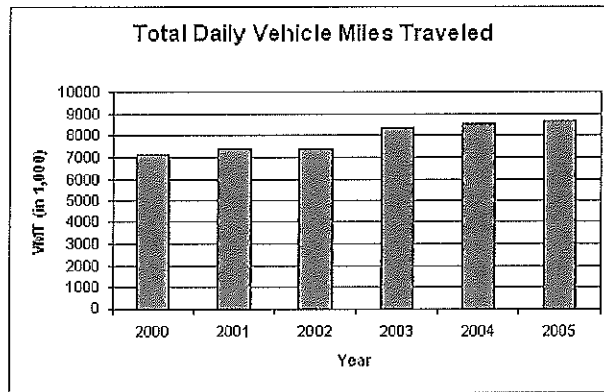
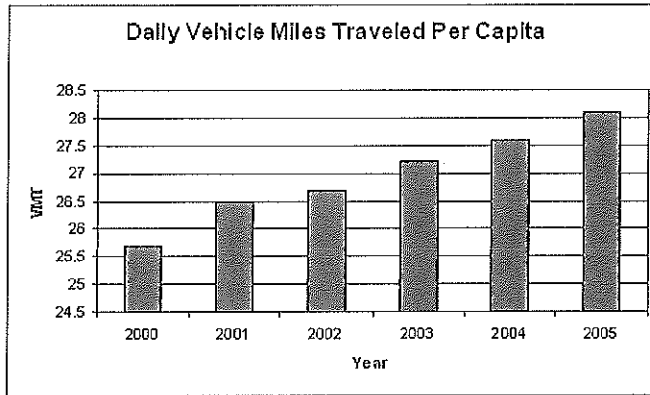
services

Select Online Service

Vehicle Miles Traveled



The total Vehicle Miles Traveled (VMT) have been steadily growing over the last several years. In 2003, there were a total of 8,338,000 VMT for the Ann Arbor urbanized area as defined by the Census. VMT increased to 8,677,000 by 2005 - a 4% increase. VMT per capita has also steadily increased from 27.2 daily VMT in 2003 to 28.1 in 2005 - a 3% increase.



What is a vehicle mile traveled?

A VMT is a unit of measure that calculates the total miles traveled by all vehicles in a specific area for a specific period of time. VMT is used to evaluate the use a roadway receives at different times of the day.

The number of vehicle-miles traveled per year for each vehicle in the Residential Transportation Energy Consumption Survey was obtained in one of two ways:

- **Calculations based on odometer readings.** For each vehicle in the sample, the survey collected a beginning-of-year and an end-of-year odometer reading. The number of vehicle-miles traveled annually is equal to the difference between the two readings, adjusted to reflect 365 days per year. The mileage for vehicles that were in the household less than a full year was adjusted to reflect the amount of time the vehicle was in the household.
- **Imputations using a regressions estimate.** For vehicles for which one or both odometer readings were missing, a regression estimate was used to estimate the annual mileage. As was done for the odometer reading calculations, the mileage for vehicles that were in the household less than a full year was adjusted to reflect the amount of time the vehicle was in the household.

Source: Energy Information Administration

How do vehicle miles traveled affect the Ann Arbor environment?

A VMT increase, more greenhouse gases are produced, contributing to air and water pollution.

156. The construction of the proposed Parking Garage violates the City's own environmental policies and is not consistent with the promotion of the public health, safety and welfare and protection of the State's natural resources from pollution, impairment or destruction.

COUNT VI

DECLARATORY AND INJUNCTIVE RELIEF

157. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 156 above and rely upon the same as though fully restated herein.

158. As more fully described above, the City approved construction of the Parking Garage in violation of the Open Meetings Act and the Freedom of Information Act.

159. As more fully described above, the City failed to consider reasonable alternatives to the Parking Garage before approving its construction.

160. As more fully described above, if the Parking Garage project is allowed to proceed, it will have a devastating impact on nearby business in the historic district including, but not limited to, Plaintiffs Herb David Guitar Studio and Jerusalem Garden.

161. As a direct and proximate result of the construction of the Parking Garage, Plaintiffs will sustain immediate and irreparable injury for which there is no adequate remedy at law.

162. As a result of the City's actions more fully described above, it is necessary for the Plaintiffs to obtain a declaratory ruling from the Court that the Parking Garage project was approved in violation of the Open Meetings Act and the Freedom of Information Act and that in light of these violations and the project's potential environmental impacts and threatened

interference with Plaintiffs' businesses, the project cannot proceed without further study and careful consideration of reasonable alternatives to the project.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- (a) Declare that the City approved the Parking Garage project in violation of the Open Meetings Act;
- (b) Declare that the City's nondisclosure of requested documents violated the Freedom of Information Act;
- (c) Enter an order which invalidates City Council's approval of the site plan for the Parking Garage and the bonding to fund the project which occurred at its meeting on February 17, 2009;
- (d) An order which enjoins City Council members from engaging in any further private emails discussions during public meetings regarding the Parking Garage project or funding for the project;
- (e) Enter an order holding that the proposed Parking Garage project constitutes a threatened nuisance to Plaintiffs' properties;
- (f) Enter an order holding that the proposed Parking Garage project constitutes a threatened trespass to Plaintiffs' properties;
- (g) Enter an order holding that the proposed Parking Garage project is likely to pollute, impair or destroy the air, water and other natural resources;
- (h) Enter a preliminary injunction requiring the City to undertake a study to determine the following:
 - (i) Consideration of the environmental impacts of the proposed new Parking Garage;
 - (ii) Identification and evaluation of the purpose and need for the proposed new Parking Garage; and
 - (iii) Evaluation of alternatives to the proposed new Parking Garage;
- (i) Enter a preliminary injunction which prohibits the City from constructing the proposed Parking Garage until a comprehensive study as detailed above is completed;