# LUDINGTON CITY PLANNING COMMISSION
# MINUTES
October 3, 2000

The regular meeting of the Ludington Planning Commission was held on October 3, 2000. The meeting was held at the Ludington Senior Citizen Center, 308 S. Rowe St., Ludington, MI and was called to order at 7:00 p.m. by Chairman John Henderson.

ROLL CALL: The roll call showed the following results:

Present: Commissioners: Tom Coleman, John Henderson, Ron Sarto, Jack Ereon, Frank Marrison, Jack Scott, Kaye Holman and Paul Peterson.

Absent: Commissioner Marge Carlson

Also Present: Bldg. Insp./Zoning Administrator John Healy, Mayor Carol Pomorski, City Manager Jim Miller, City Attorney Roger Anderson and Recording Secretary Karen McKinley.

AGENDA APPROVAL: Commissioner Coleman made a motion seconded by Commissioner Holman to approve the agenda as written. Motion carried unanimously.

PUBLIC COMMENTS & COMMUNICATIONS:

Retired Master Sergeant Jerry Denby, 204 N. William: I stand in opposition to the HOF expansion for special variances. We've heard the same comments over and over the last several planning commission boards and it's almost useless to state them again. You've got them on public record. I stand in opposition to any special variances or expansion into our residential area.

Gerry Genter, 804 Diana: I hope the planning commission will take a long look at the rezoning of the waterfront. I can see their point in which they have got a very good point. I agree with that 100%. But the people that own property, I think, they're being penalized by the size of the proposed. I realize it's not set in gold or set in stone, but I think they ought to take a longer look

Bob Mangolitz, 671 Audobon Dr, Holland Mi.: What is the planning commission intending to do about the waterfront issue tonight.

Commissioner Henderson: On the agenda tonight, the waterfront committee is going to give a report, that's all we're going to do. Just generally give us a report on the workshop meeting.

Bob Manglitz: I'd just like to go on record that there were several items in the workshop that they held, that I was opposed to. In particular the public access to private property.

Bob Selof, 1010 N. Ferry: I represent the Ludington Boat Club and we're affected by the waterfront proposal, and at this point we are also opposed to the public access to private property.

Steve Abrahamson, 6968 Duneview: And I just want to go on record as being opposed to the public access on the waterfront property.

Linus Thalman, 1191 Gary: I to am opposed to public access.

Commissioner Henderson: That was pertaining to waterfront?

Linus Thalman: Waterfront, yes.

Janice Denby, 204 N. William: I'm opposed to House of Flavors expanding in any way possible. I think they've outgrown their location. They need to consider moving on. They're not a new company, they're well established, and it's time to move.

Tom Peacock, 1937 Tall Oaks Drive: I don't have specific criticism of the efforts that have been put into the waterfront planning so far, but I hope there is some sort of forum so that the city, as well as the landowners, can come to some sort of a viable agreement that's fair to both the public and the owners. I think I can understand where this board is coming from and try to protect the citys' view and so on, but it seems rather severe. I think there should be a forum so somehow there can be some compromise arrived at.

Commissioner Henderson: That is what they were trying to do with the workshop. But they may hold other ones. Any other public comments?

Bob Budreau, 921 Seminole: Just a couple comments. In just a general view of development along the waterfront, our central business district, some other areas. I spent this afternoon with 20 pretty high powered commercial brokers in Grand Rapids. Part of what we talked about had nothing to do with this development. But the issue came on the table about Ludington in general. And one of the things I will tell you and I've said this before at council meetings, it's amazing how many people know what's happening to Ludington. Of the 20 brokers that were there, and they represented Grand Rapids, Kalamazooo, Holland, Traverse City, several communities around there, the Western Michigan metropolitan areas. Of all those people that were there, 18 of them have been to Ludington this summer, and we're not really a destination on the way to someplace else, you virtually have to come here to be here. Every one of them knew about our waterfront development, every one of them knew about what is happening with the Meijer going in, they also understand the corridor and what's happening there. I know that's not a city issue but it affects us downtown and our waterfront. By talking about that I was the table of conversation at the time about Ludington and they all want a piece of us, I mean they're all watching us very, very carefully. The only point I make of that is I hope that what we're doing is we're looking at the big picture on development, because Ludington is going to develop, I mean it's going to happen. I'd rather see good solid development than poor development. That's all my comments.

Jim Claire, 720 S.Washington: Last week I've had the opportunity to meet with, or speak with 3 of the 4 individuals that are on the sub-committee, on the`planning commission, that is drafting the new ordinance. I wanted to thank them for taking the time to come down and meet with me and I think they have a better feel for some of the issues and concerns that I have. I look forward to further meetings with them to try to resolve the situation that we have now. I basically open up my door if any of the people on the commission would like to get together and speak with me. I'd definitely like to have more public discussion and discussion with the property owners as well as with the sub-committee to get this resolved. Thanks again.

Cal Prince, 27 E. 33rd Holland, Mi.: I'd like to have you to take a good close look at the size of the buildings and the gaps that they're allowing in between there before you make those the rule and the buildability of those in making those cost affective is pretty difficult. When you say 93 feet to us that means 75 because you can't go 93 and make that work. And with a 24 ' gap unless it's a ranch style you have to spread them further than that or go to things with no windows in them so I don't think you achieve what you're after. I'll be glad to discuss that with them if you like.

Lynn Ponce: I live in Orchard View Menlo Park, but sometimes my wife thinks I live at the office which is at 300 S. Rath Ave., as the Marketing Director for Harbor Front Plaza, so you obviously know where my bias lies. We have a debate at 9:00 tonight so I don't think I need to do one here, but I would like to just point out a couple of facts to you. I started July 28, and we keep very serious records at the condominium project and since that time up until last week there were 1631 visitors that I personally talked to that toured the Harbor Front Plaza. Of those the only negative comments that any of those visitor had were looking to the East of our property not to the West. I think the waterfront planning that has been done up to this point has been wonderful. I give tours of the condominiums and the people look out in the front and they are primarily people from out of town and they're also primarily people that come to Ludington week after week every year. Many of them come and say we come here every week this year and we are very proud to show that building off. I think we, as citizens of Ludington are very proud of what has been done so far. Let's try to keep the ball rolling in a positive motion. Get some workshops in here and get things resolved so that we, as citizens, can as those people who come here as destinations quite possible to spend money and to invest our community. We need to keep that ball rolling in a positive manner and not go back to rock piles; bus garages things that we have had in the past. And actually that's what people mention when they come in. They say we remember what was here before and this is just a marvelous, marvelous development. And that's not just the harbor front, that's the park and the waterfront. So let's keep the ball rolling

John Riedl, 202 N Robert: with the House of Flavors I am totally against any more expansion down there as well as anything. But I do have a question on the waterfront. When you came up with that 93 or 94 foot building with a 24-foot view corridor I guess is what it's for. Is there any chance that that could be waived as lots develop because along Rath Ave. I just look at this for a developer to own a city block and have to split a building. Who requires that corridor behind them? It's the back end of a commercial area that is back ends of buildings nobody's living back there. Can those things be waived then to allow a longer building to be built in one piece? And that was a question I was thinking about. Because there are spots. You can keep the corridor along the streets open but why do you have to have them in the middle of the block, depending on who's behind them. And certainly back in the buildings which are primarily accesses for trucks and delivery hardly would need a view. And there are other blocks in there where there is no residential behind there.

Sue Russell, 807 E. Ludington Ave.: I'm here also for the House of Flavor issue, but I did want to make a comment about the waterfront. I'd like to say that what was quoted in the newspaper by Tom Coleman I guess I feel real strongly. I think we should have some thought as far as building positioning, height. Maybe things could be different, or could have been different. I do know that what has been done is very beautiful, very beautiful there's no doubt but again I would hate to see a wall put up. And I'll challenge each any every one of you tonight to please think about blocking that natural resource.

Barb Sitler, 202 N Gaylord: I'm also here on the House of Flavors expansion or rezoning, special land use. I think the waterfront people are here concerned with the future and I guess that's part of what I'd

like you to also think of with the House of Flavor expansion. We know they do own or West End Development does own more property downtown and part of the comment that's come up with the House of Flavor expansion is the city has allowed us to expand and expand and expand so how can we say no now but I think we also have to think of the decision you make as far as the current property is also going to affect more. If we say yes you can expand on this property is that going to lead to the other properties that they own downtown as more of a support of ok we've agreed to this so we can't say no to further down the road to.

Bob Budreau, 921 Seminol: I'd like to see addressed a couple issues. One is of the public land that is asked for, I would like to know how is that taxed, who maintains it, who handles the liability on it, and issues to the fact of who, I guess I'm not sure what that means, public lands, if that's a barren field or if that's a completely landscaped sight, improved or not improved-in the discussion if you would please.

MINUTES: Commissioner Ereon made a motion to approve the minutes of the September 5, 2000 meeting, as written, seconded by Commissioner Peterson. Motion carried unanimously.

PUBLIC HEARINGS:

**REZONING**

To consider a request from Dr. Daniel R. King to rezone the following described property from R3A (Multi Family Residential District) to LC (Limited Commercial):
Resseguie's addition lot 1 and E 5 Ft of lot 2 block 4 also known as 102 S. Washington Ave. and Resseguie's addition W 55 ft of lot 2 block 4 also known as 608 E Ludington Ave.

Dr. King who has his dental office at 102 S. Washington Ave. explained to the Commission the problems he has with parking for the dental office. He wants to purchase the property at 608 E. Ludington Ave to create off-street parking in the rear of that property

Ray Czap, 106 S Washington Ave.: said that he is in favor of the request with the stipulation of looking into a storm sewer catch basin on the proposed parking lot due to water run off into what he thinks is now an abandoned city storm sewer system

Tom Tyron, 305 E Ludington Ave: said he was in favor of the rezoning. He asked Dr. King if he was going to keep the house. Dr. King stated that he didn't want the house itself and would sell it.

Chairman Henderson closed the public hearing.

Commissioner Ereon reported that they looked at the property and had questions on if Dr. King sold the house how the new owners would have access to it. Dr. King stated he didn't know and he would accept suggestions from the commission as to who he could ask that to.

Chairman Henderson noted that there were requirements in the book and asked Dr. King if his lot was currently a full city lot 60 x 140. Dr. King stated his lot is 65 wide by 140 and the other was 55 ft by 140.

Commissioner Scott stated that there is a garage behind the lot on Ludington Ave. Asked Dr. King if he was going to leave it. Dr. King stated it would be removed.

Commissioner Scott stated that he, the sub-committee chair person and Commissioner Ereon could not make a recommendation to the full board at this time what should be done as they felt they did not have enough information. He suggests to Dr. King and the Commission at this time that Dr. King should talk to someone about what he intends to do. He suggests Dr. King get a better drawing, more specifics, and more details on what he intends to do.

Dr. King asked to whom he should meet with when he gets more information.

Chairman Henderson stated it would be Commissioners Scott and Ereon

Commissioner Scott made a motion to table, seconded by Commissioner Ereon. Motion carried, with Commissioner Coleman opposing based on the fact of his not having a chance to discuss some of his concerns.

HOUSE OF FLAVORS

To consider a request from the House of Flavors for an expansion of non-conformity at Original Plat, Lot 3, Block 29, also known as 405 W Court St.

Commissioner Sarto stated that the sub-committee has met and heard many comments from many people on both sides of this issue. The consensus from the public is that there really would not be a lot of opposition to continue using the house as offices and a breakroom as long as they weren't using the property for storage of pallets or machinery, and as long as the house was kept up in a professional manner and the lawn was kept in a manner that met the area and transition of the area. Our feeling in the sub-committee is we could allow that use as a special land use without allowing the use for the property itself for storing pallets, etc. We put a lot of thought into this whole process and think that the House of Flavor has done some work in the last few weeks especially to move some things out of there to make it more presentable and I think if Jeff and the House of Flavor continues to do that they may get some more support from the neighbors to be able to use that property in a different way with different screening. One of the suggestions I have and the committee too is that there is an existing fence on the S lot line and an existing fence on the W lot line. My proposal would be to allow those fences to either be left as is or be removed with the exception of the W one. The S one could be removed if the House of Flavors chose to, or left. I think either way it wouldn't be a problem from my perspective.

Commissioner Ereon questioned Commissioner Sarto on the S fence. How are they going to control the traffic? If they take it down it could create a hazard.

Commissioner Sarto stated that was a concern regarding the W fence also and that he would personally like to see them stay there as is, not a chain link fence or to go any higher.

Commissioner Peterson stated he is on the committee and agreed with the consensus, however his concern remains the same as it is for many people. I'm afraid that when the House of Flavor is given an inch it takes a mile and I think that no matter we suggest or approve tonight they will find a way to get around it. And that is a very major concern we all have, and should have. Unfortunately they tell you
one thing and do something else, it's a record that they have, a pattern that they've established and you're very hesitant to give them anything other than let the city pursue with it's lawsuit. That's my feeling.

Commissioner Coleman stated 2 ½ years ago when he first came on the Commission one of his first jobs was to sit with the neighborhood subcommittee and, first of all identify the problems that were occurring and see if they could work out something. It then went to this body and the city commission and was turned down. Some of those things were good business procedures for the House of Flavors as well as the neighborhood and they were agreed upon at least in form that they would take place and haven't taken place, and that concerns me. It concerns me that if we have a non-conforming use and expand that non-conforming use that there's another step towards the decision of the House of Flavor to make some hard business decisions on what it's going to do in the future. Those are my concerns. Conditions on limited commercial or a special land use or a non-conforming use still is a concern. That's what I've got to say.

Commissioner Scott stated going back in period of time we had a very serious decision to make, the council and myself, as to whether we would even permit the House of Flavors to remain at that location. Hopefully after we studied the problems and the impact on the community we made the right decision at that time. Never realizing that the House of Flavor would erupt

into a multi national manufacturing organization that is one of the biggest ice cream producers in the world. That doesn't help the neighbors. That doesn't help the city to know that they have been extremely successful. True I believe what Mr. Peterson has said and some of the other concerns of the neighbors that they've not always done what we've expected them to do. Whether that's our fault or theirs I don't know but it's been done, the damage has been done and we have an awful lot of people in the neighborhood but we also have a business that many years ago we encouraged to remain in this community and remain in business. Had we stood our ground years back it's entirely possible they'd have moved out of the city, maybe of the county, maybe out of the state, I don't know. But that didn't happen and we kept them here. So I think we owe them to a certain extent some form of- to make it easier to do what has to be done and ultimately move their operation. Everybody in this room, including Jeff, has to understand that this time that business does not belong there. That manufacturing organization should not be in that neighborhood. It is in the absolutely wrong place. But be that as it may it is there. Now if we tell them that they cannot do this and they cannot do that and they cannot do the other things, we literally at this point in time are putting them out of business. We are telling them tough, go, do whatever you have to do, take your employees and get out of town. I don't think myself personally that is the right attitude to have for all that's happened in the past. My suggestion would be to set down a set of rules for them tell them what they can and can't do. I don't want to see a 12' fence down there, and I don't think I want I want to see a chain link fence with a bunch of strips going through it. I think there is some attractive fencing materials, pre-manufactured some of them which could be very attractive to the neighborhood. Maybe a maximum height of 8' with the understanding any pallets that they store back there will be beneath the line of vision. Also put some strict rules on the trucks. See to it that those trucks are backed into their facilities and a gate closed behind them. Make sure that they clean up, so to speak, the mess that exists back behind the restaurant and the service station. Sometimes you can hardly drive through there. We go to the service station all the time and sometimes drive through the back entry there past Tommy T's restaurant and there is junk all over the place. I'm sure Jeff will agree they can keep that cleaned up a lot better. Mr. Anderson, our legal council, tell me if I'm wrong here, but can we set down a set of rules and say this is what has to be done, and also on top of that set up some kind of system of fines and if they don't comply, immediately see to it that they are fined, and if necessary ask them to put up a personal surety of a cash account of some kind that we can draw upon if we decide to fine them $500 for pallets that are sitting out on the sidewalk. We can immediately fine them $500 and withdraw that money out of the account. Also I think it becomes necessary at this time to talk to Mr. Hackert and possibly some of his superiors, sit down with a conference with them, set a guideline of a time limit when they have to withdraw from the city of Ludington, have to move their operations because they're not in compliance with our rules and regulations and we can't help them expand any further. No further expansions. No further ok, you can do this fellows, park your motorcycles on the sidewalk. It's going to be a time when we say, you can stay here for this long a period of time as long as you do it the way we want it done and the minute you fail to comply we're going to say to you move the operation. You no longer can operate your manufacturing plant here.

Commissioner Coleman asked the attorney whether we could impose fines.

Attorney Anderson stated we could impose fines. Stating that since the early 1980's almost continuously throughout that time the House of Flavor has been in violation of our zoning laws. You go after them and the problems typically move from one place to another and so what I mean is we've had regulations and we've gone after them and we've sued. Typically fining a big company like this is not very practical. Jeff, I'm sure if we said we were going to give you a fine, it's cheaper for big companies to pay a fine than to comply. Kind of like rent. It's not very practical to fine a company like this. This is not the first time we've sued House of Flavor; this is at least the second. As far as requiring the House of Flavor to leave town in violation that is not even legally possible. We have to look to the typical enforcement mechanism that we've had. If you allowed the House of Flavor to expand into that area we might be able to revoke that specific permission if there was a violation, but we certainly couldn't do something else about the rest of the operation. As far as the trucks, that's a much more difficult problem to deal with because you have public streets, you've got commerce laws of the U.S. Constitution about interstate commerce and what you can do with interstate commerce. You can really put too big a burden on the trucks coming and going. You can put some limitations, but somewhere along the line those limitations would not be enforceable. So, what you're proposing sounds like a workable solution, but there is not the legal framework to make it work.

Chairman Henderson stated that he'd been on the board a long time and he has dealt with the many complaints of the neighbors of the House of Flavors and it's always been the same complaints, nothing different. They're always the same thing. The pallets, the noise, the disruption in the neighborhood. He agrees that it is time for them to move. He stated if we continue to make rules and tons of conditions, we will continue to drag the city into lengthy lawsuits and putting hardships on a lot of people. He does not get a good feeling that a leaf has turned that it will be better. The expansions that we have done has caused at least that adjoining property to be devalueized to the point of now it's only good for a breakroom and offices and that's not what we're suppose to be doing when we look at the standards. Are we going to continue down this

path? I know from talking to the other Commissioners it's been a difficult decision to wrestle with. Everything from past history to the past use of that property. We've tried a lot of different solutions. My feeling is we really need to consider by allowing this expansion, and I don't want to put the House of Flavors out of business, I believe they have other options. They also have control of the property that they own today and maintain it to a respectable thing and the House of Flavor is going to be held to a different standard because they are next to that neighborhood and you can cry that mine is the same as the other industries here but they've got themselves in the right area with the right setbacks and so people are willing to agree with that. But when you're in an area that is residential and you have to do special things and it's going to cost you a lot more money to do those things. I think that's fair, because you're asking people to live with me doing these types of things. I'm willing to do those but they're going to cost me a premium. If I was in an industrial park, not such an issue. I think we need to consider that. What impact it will have on the neighborhood and the city and everything else that goes there.

Commissioner Coleman: A couple other comments from a planning perspective. One of the planning tools is transition from downtown business district to the neighborhood or residential and limited commercial is one of those steps. Also I think it's overstated, with due respect to Mr. Scott that we're telling folks to get out of town, because we're not doing that. What I'm looking for is the hard business decision to be made. They're cursed and blessed by their success. What they need to do is take a look at where they're doing business and how they're doing business, and if we encourage them one more time it's going to delay it that much more.

Chairman Henderson: Are we setting them up to ask us again at the next meeting for the next few years to get me by and when will we stop it.

Commissioner Sarto made a motion that the House of Flavor's request for non-conformity at Lot 3 Block 29 also known as 405 W Court be allowed for use of the house as offices and a breakroom and no non-conformity allowed in the property area, the open property for any use other than limited commercial use. With that request I would also like to state that they maintain the fence on the W and S lot lines or within the setback areas to no higher than 8' and to a similar construction to what's there.

Attorney Anderson: You were talking earlier of other conditions, do you want to include other conditions, just for clarification?

Commissioner Sarto: We had mentioned maintaining the house in a professional and appealing manner.

Commissioner Ereon: How about the lawn?

Commissioner Sarto: Keeping the lawn and the area to an appealing area.

Commissioner Coleman: Point of order. According to Robert's Rule of Order there has been a motion made. It has not been seconded; it's not up for discussion at this time. There's 2 options – either we take the second and discuss or motion withdrawn and a discussion begins.

Commissioner Sarto: I would like to strike the lawn part of it and just let the motion continue at that point.

Commissioner Holman seconded the motion.

Chairman Henderson stated the motion has been seconded to allow the use at 405 W Court for the expansion of the non-conformity to the House of Flavor with the conditions that it be used as a breakroom office with limited use of the property to be limited to limited commercial. Maintain the fence at its current height and condition at its W and S side and keep the house looking in a professional manner.

Commissioner Ereon asked for a roll call vote.

Commissioner Peterson asked how to enforce conditions on Ron's motion. What's the penalty?

Attorney Anderson stated that the penalty would be that we would have to go in and enforce it and we'd have to have the court enforce it. There is no case law on this in Michigan so I don't know how a court would rule. One condition you can consider including would be that the planning commission would reserve the right either to impose further conditions or

revoke the special land use if there were violations. Again I don't know how a court would rule on this but if you put them in there, at least there would be some potential tool that we could use.

Commissioner Sarto stated that he would like to amend his motion to include a stipulation that if House of Flavors does not comply with the conditions that were put on, that the special land use for non-conforming use be revoked at that time.

Commissioner Holman seconded the motion.

Chairman Henderson asked Commissioner Sarto to repeat his motion.

Commissioner Sarto stated that if at any time the House of Flavor does not comply with the conditions of the motion as stated the special land use would be revoked at that time.

Chairman Henderson asked if there were any discussions on the amended motion.

Commissioner Coleman: There are 2 situations we can go with here. I have a little problem whether we're getting close to contract zoning with some of the stipulations, that's one point, and I won't discuss that any further. We kind of have both ends of the issue here. One if we go with the expansion of non-conforming use as stipulated with the house, the rest of the property remains as restricted as limited commercial. That is one end. The other is that we maintain it in strictly limited commercial as it fits. Those are the 2 options. The first one says yes, we're working with the House of Flavors to help you with your business. The other one says I think we've helped enough.

Chairman Henderson called for a vote to the amendment to the original motion. Motion carried with Ereon and Coleman opposing.

Chairman Henderson called for a roll call vote on the original motion: To allow the expansion of a non conforming use at 405 W Court St to be used as a breakroom office and the rest of the property to be limited to the conditions of limited commercial and to maintain the fence on the W and S side at the same heights and to keep the house looking professionally appealing to the surrounding area and any non complying of these conditions would allow the special land use to be revoked immediately.

The roll call vote is as follows:

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| Paul Peterson: | No |
| Kaye Holman | Yes |
| John Henderson | No |
| Jack Ereon | No |
| Ron Sarto | Yes |
| Jack Scott | No |
| Tom Coleman | No |
| Frank Marrison | No |

Chairman Henderson: With 6 Nos, 2 yes, and 1 absent, the motion failed.

<u>Waterfront Workshop Meeting Report</u>

Commissioner Coleman gave a report on the Waterfront Workshop. Stated that there were more than 30 people at the workshop, mostly property owners. He stated that they will work on the language some more, and that they offered to meet with property owners again.

Commissioners Sarto and Holman thought the workshop went well but know that additional workshops are necessary. They were pleased with the turnout, and want the people to continue to give the sub committee their input.

Commissioner Scott stated he likened it to the workshops and studies that they did on the original Waterfront Master Plan. It took a lot of hard work and a lot of meetings, with a lot of input from a lot of people, because what they do on these issues will point the course of events for many decades for the City of Ludington.

Commissioner Coleman stated that they work off the zoning ordinance, and also the Waterfront Master Plan and the Michigan State Community Audit 1995. He plans to have the sub committee look over the language again and the input from the comments at the workshop. It's too important to everyone that lives and does business here that we get this right. We want to get it as right as we can.

PUWD REPORT: NONE

NEW BUSINESS: NONE

SITE PLANS REVIEW: NONE

COMMENTS AND COMMUNICATIONS: NONE

ADJOURNMENT:

Commissioner Ereon made a motion to adjourn the meeting at 8:14 seconded by Commissioner Sarto. Motion carried unanimously.

Respectfully submitted,
Karen McKinley, Recording Secretary

John Henderson, Chairman