

**PROCEEDINGS  
OF  
CITY COUNCIL  
OF THE  
CITY OF LOWELL  
TUESDAY, SEPTEMBER 03, 2019, 7:00 P.M.**

1. **CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL.**

The Meeting was called to order at 7:00 p.m. by Mayor DeVore and City Clerk Sue Ullery called roll.

Present: Councilmembers Marty Chambers, Cliff Yankovich, Jim Salzwedel, Greg Canfield and Mayor DeVore.

Absent: None.

Also Present: City Manager Michael Burns, Chief of Police Steve Bukala, DPW Director Dan Czarnecki and City Clerk Sue Ullery, Lowell Light & Power Steve Donkersloot, City Attorneys Dick Wendt and Jessica Wood.

2. **APPROVAL OF THE CONSENT AGENDA.**

- Approval of the Agenda.
- Approve and place on file the Committee of the Whole and Regular minutes of the August 19, 2019 City Council Meetings.
- Authorize payment of invoices in the amount of \$504,634.37.

IT WAS MOVED BY SALZWEDEL and seconded by CHAMBERS to approve the consent agenda as written.

YES: Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, and Councilmember Chambers.

NO: None.

ABSENT: None.

MOTION CARRIED.

3. **CITIZEN COMMENTS FOR ITEMS NOT ON THE AGENDA.**

There was none.

4. **OLD BUSINESS**

a. **Adult Use Marijuana Ordinances.**

City Manager Michael Burns stated the ordinance has been modified per the August 19, 2019 Committee of the Whole discussion and pared down from 32 pages to 25 pages. The zoning ordinance requirements, namely the 1,000-foot restriction from schools and preschools, the C-2 Business District restriction and the 500 feet from C-2 Business District restrictions remain. We have not added any provisions limiting the number of each type of facility. There is concern with the possibility of restricting the number of facilities and the possibility of opening ourselves up to being challenged legally with any requirements. However, the City Council has the ability to modify this portion of the ordinance to its preference.

Burns continued stating we have attached applications spelling out processes from the City of Battle Creek and Grand Rapids on how they are selecting applicants in their perspective cities. We can discuss these

processes as they are subjectively different.

Jessica Wood, Attorney with Dickinson Wright then gave an update on the modifications.

IT WAS MOVED BY CANFIELD and seconded by SALZWEDEL to set a public hearing at the September 16, 2019 City Council meeting.

YES: Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, and Councilmember Canfield.

NO: None.

ABSENT: None.

MOTION CARRIED.

b. Lowell Township Water and Sewer Agreements.

City Manager Michael Burns stated we are still continuing our conversations with Lowell Township regarding the future water and sewer planning and possible agreements. Burns gave an update and stated they are meeting again next Tuesday at the Township.

c. City Income Tax.

City Manager Michael Burns gave Council an update since the last meeting. Informational meeting dates have been set for Monday, September 16, 2019 at 6:00 p.m., Tuesday October 1, 2019 at 11:00 a.m. Wednesday, October 16, 2019 at 6:00 p.m. in the Council Chambers. Informational mailers were sent out with the water/sewer bill and newsletter as well.

Kathy Normstead who resides at 590 Shepard did receive the information that was sent on the Income tax and she agrees with City Manager Michael Burns that the street conditions in the City of Lowell are at an all-time low and gave suggestions on how to get the bill passed.

5. **NEW BUSINESS**

a. Public Hearing – Unity Schools – PUD Review.

Mayor DeVore opened the Public Hearing.

Todd Schaal with Unity School Investors and a resident at 216 W. Main here in Lowell, stated Andy Moore with William & Works' report is extremely thorough and detailed. Jerry Zandstra and himself are excited to take the two buildings that have been in disrepair for over 15 years and do something cool with them, including a lot of landscaping and will put their best foot forward.

Andy Moore with William & Works reviewed the memo with all the applicable standards of the zoning ordinance to determine whether or not the Council feels those standards are met, and if there are any items of concern.

The applicant has proposed a condominium project on the subject property, which would include re-development of the existing Unity School building and bus garage, known as "Riverview Flats." The applicant is proposing three phases during the project.

The first phase would convert the former bus garage into 14 residential condominiums. The second phase would renovate the existing Unity School building into new condominium units (approximately 16 residential units) A parking lot for these units is proposed on the east side of the school building with internal access from the private drive created during Phase 1.

The project's third phase would involve the construction of residential units in new buildings on the northeastern corner of the property.

The Planning Commission recommended approval of the project to the City Council during its regular August Planning Commission meeting. The Commission included several conditions in its recommendation.

**Objective and Qualifying Conditions.** In accordance with Section 15.02 of the City of Lowell Zoning Ordinance, the City Council shall consider the degree to which the proposed PUD satisfies the objectives and qualifying conditions for PUDs. These objectives are listed below.

### Objectives

1. To encourage the provision and protection of open spaces, cultural/historic resources, the development of recreational amenities, and where included in the plan, other support facilities in a generally central location within reasonable distance of all dwelling units.

**Remarks:** The proposed development includes the redevelopment of the former Unity School building and bus garage. Preservation of these old structures aligns with the City's value of preserving historic buildings. Since many Lowell residents attended Unity School, its preservation would retain some historic qualities of the building that may be appreciated by residents. Additionally, the PUD plan involves the creation of several residential units near the downtown area. Although the development is not proposing additional support facilities, the location of residential units near the downtown area may allow residents to have access to other support facilities in a walkable environment.

The applicant has included designated open space areas in the plan. This open space includes all areas that do not have structural development. The largest and most prominent open space area is located in the southwestern corner of the subject property. This area has an existing concrete base and the applicant is proposing landscaped islands within the area. There are also smaller sodded open space elements that exist primarily in the corners of the site. The designation of open space on the site plan adheres to this objective. However, the provided open spaces should be considered for their ability to function for the provision or protection of open areas on the property. The size of the parcel limits the amount of open space that may be provided in this development; however, it does not appear that many of the designated open space areas were designed with the purpose to function as an open space. Yet, in an urban setting, significant open space is not always desired or necessary. Therefore, the role of open spaces in the development should be considered by the City Council. Recreational activities may be encouraged by the development's proximity to a boat launch on High Street and other City parks, services, and the Riverwalk. However, specific recreational amenities are not included on the plan or described in the narrative. This should also be considered by the City Council.

2. To encourage developers to use a more creative and imaginative approach in the development of property.

**Remarks:** The applicant indicated in the project narrative that previous developers interested in this property had proposed to demolish the existing buildings. The applicant has ostensibly approached this development with the objective of preserving the existing buildings. In order to renovate these buildings, a creative design is required that appears to be somewhat limited through the strict application of the current Mixed Use zoning district standards. Specifically, Mixed Use

zoning requires a minimum building frontage of 80% in primary front yards and 50% in secondary front yards, in accordance with Section 16A.04. Because the subject property is a corner lot surrounded by three rights-of-way, the parcel has three front yards. Creating a design that retains the existing buildings and meets the primary and secondary front yard coverage requirements would be difficult, if not impossible, under the strict requirements of the underlying Mixed Use District. Additionally, the mixed use zoning designation does not allow off street parking in the front yard, which limits the amount of parking available for residents. Thus, through PUD rezoning, it appears that a more creative approach is possible that may not have been otherwise feasible if the requirements of the underlying zoning district were applied.

3. To allow for market-driven development or redevelopment in places that are most conducive to accommodating additional activity.

**Remarks:** A cursory review of relevant market data trends suggests that the Lowell housing market is competitive. The proposed development site is located in downtown Lowell, along the Flat River, and adjacent to residential neighborhoods, public facilities, and services. Adequate infrastructure is already in place and accessible at the subject property, so the property is well-positioned as an ideal infill site where relatively dense residential densities are appropriate. If there are concerns about the overall viability of the project, the City Council may request additional evidence from the applicant in order to show that there is demand for the project that would reflect the desire to encourage market-driven redevelopment activity.

4. To facilitate economic development through the creation of a mix of uses and/or building types.

**Remarks:** The applicant has indicated in the project narrative that the project “will generate new real estate tax revenue for the City” as well as “new economic benefits for local businesses with the redevelopment of multiple buildings.” It is possible that the proposed PUD would result in increased property values, as each condominium unit would pay property taxes. The combination of redevelopment and new construction appears to provide a variety of building types that could lead to a successful development. The location of the development near the downtown area can also be expected to generate local economic activity, although this effect will not likely be easily noticeable since only a total of 44 units are proposed. Nevertheless, if successful, the proposed project would likely contribute positively to economic development in the City.

5. To create walkable developments with pedestrian-oriented buildings and open space that connects to nearby destinations or neighborhoods.

**Remarks:** The proposed development is located near the Lowell Riverwalk. This walkway is already connected to sidewalks surrounding the proposed development and will facilitate pedestrian traffic between residential neighborhoods and the downtown area. The applicant has also proposed sidewalks within the development, connecting to surrounding sidewalks on the northern and eastern property boundaries.

The applicant has indicated open space areas on the site plan. A small open space is located in the northeast corner of the property. The landscape plan includes some landscaping at this location, but it does not appear to be intended for public use. Further, there is a portion of concrete space located in the southwest corner of the subject property, adjacent to the former Unity School building. The landscape plan shows several landscape islands in this location; however, the purpose of this space is unclear from the plan. While the proposed development provides minimal open space, a significant amount of open space is not likely necessary in a downtown setting. The

City Council should discuss whether the proposed open space is sufficient and appropriate.

6. To provide for the adaptive re-use of significant or historic buildings;

**Remarks:** The applicant has proposed to reuse the former Unity School building and bus garage. This will retain some local cultural and historic characteristics, as many of Lowell's residents attended the school over the years prior to its closure. Thus, the development appears to provide for the adaptive re-use of significant buildings in the community.

7. To allow phased construction with the knowledge that subsequent phases will be approved as originally planned and approved by the city.

**Remarks:** The applicant has proposed a phased development with a total of three phases. It is important to note that phases one and two of the development will need to exist and function both independently and collectively. Most multi-phase projects take years to reach full build-out, so it is important that each development phase of the development is fully functional on its own, so that the project is functional if subsequent phases are not developed for long periods of time. The portion of the school building that protrudes into the High Street right of way will need to be addressed in detail in phase 2, although the City Council may request additional information regarding how this will be handled. Further, if the PUD rezoning is approved, each phase will be required to secure site plan approval from the Planning Commission, who will need to verify that the phase, when presented, is consistent with the original PUD rezoning approval.

8. To promote flexibility in design and to permit planned diversification in the location of structures.

**Remarks:** The proposed development is designed so as to utilize the existing buildings on the site. Rezoning to PUD allows greater flexibility in requirements such as parking, setbacks, and front yard build-to zone requirements. Therefore, it appears that rezoning to PUD would allow for diversification in the location of structures, since the development is already somewhat limited by utilizing existing buildings.

9. To promote the efficient use of land to facilitate a more economic arrangement of buildings, circulation systems, land use, and utilities.

**Remarks:** Because two buildings already exist on the subject property, utilities are readily available for redevelopment. Redevelopment of existing buildings also contributes to the conservation and efficient use of building materials. Therefore, it appears as though the proposed development would offer an efficient arrangement of buildings and utilities.

Vehicular circulation appears to be efficiently designed to facilitate traffic between different buildings. Internal sidewalks provide logical connections to existing sidewalks bordering the subject property and within the site. Therefore, it appears as though the proposed arrangement would promote efficient use of buildings, circulation systems, land use, and utilities.

10. To minimize adverse traffic impacts and to accommodate safe and efficient pedestrian access and circulation;

**Remarks:** Internal vehicular access is proposed through a private drive with two curb cuts: one on King Street and one on Monroe Street. It appears as though this design would not adversely impact traffic.

Pedestrian circulation includes connections to existing sidewalks bordering the subject property. A sidewalk is also proposed between the former Unity School building and parking lot, which facilitates an internal connection to another sidewalk. Internal sidewalks also connect the former bus garage, the former Unity school, and internal parking spaces developed during phase 2 to existing sidewalks along Monroe Street and King Street. The sidewalks do not connect to the Lowell Riverwalk internally, but connect to the existing sidewalk along King Street, which has a connection point to the Riverwalk. The Riverwalk may also be accessed via the High Street right-of-way.

Additionally, as described above, the southeast portion of the development includes a concrete area with landscape islands. It is unclear whether this is intended to function for pedestrian circulation. The City Council may discuss safe and efficient pedestrian access and circulation with the applicant.

11. To provide for redevelopment of sites and/or buildings that are under-developed or have fallen into disrepair;

**Remarks:** The former Unity School building and bus garage are vacant buildings and have begun to fall into disrepair. The proposed PUD plan would redevelop these buildings and restore them to a useful state.

12. To combine and coordinate architectural styles, building forms, and building relationships within the PUD; and

**Remarks:** The exteriors of existing buildings are consistent with each other. The applicant has indicated in the project narrative that new materials will coordinate and complement the architectural styles and building forms that currently exist. The applicant has submitted building elevations for the phase 1 development, and some renderings of this phase are found on the project website. The City Council may discuss architectural styles and building forms with the applicant to ensure they are consistent throughout the development.

13. To ensure a quality of construction commensurate with other developments within the city.

**Remarks:** In the applicant's narrative, it is stated that the "quality of construction will meet or exceed that of other buildings in and around the City." If desired, the City Council may ask for additional information regarding how the applicant intends to ensure quality of construction, although the preliminary indications are that the materials would be of an acceptable quality.

### Qualifying Conditions

1. Ownership. The tract of land for which a PUD application is received must be either in one (1) ownership or with written approval of the owners of all affected properties.

**Remarks:** The former Unity School building extends into the High Street right-of-way. However, the applicant has indicated on the site plan that the portion extending into the right-of-way will be removed to the property line. Therefore, there are no owners of affected properties associated with this development and the PUD application is in one ownership. Subject to the removal of the portion of the former Unity School building in the right-of-way, this condition is met.

2. Conditions. To be considered as a PUD, the proposed development must fulfill at least one (1)

of the following conditions:

- a. The PUD contains two (2) or more separate and distinct uses, for example, residential dwellings and office or commercial uses;
- b. The PUD site exhibits significant natural features encompassing at least twenty-five (25) percent of the land area of the PUD which will be preserved as a result of the PUD plan.
- c. The PUD is designed to preserve, in perpetuity, at least sixty (60) percent of the total area of the site as open space.
- d. The PUD constitutes a significant redevelopment of an underutilized or vacant property where conventional development may not be feasible.

**Remarks:** It appears as though the PUD Plan fulfills letter (d), as it proposes to redevelop two existing buildings and construct two new buildings on what is presently an underutilized property. Conventional development that complies fully with the underlying Mixed Use zoning regulation may be infeasible unless the buildings are razed. Due to the intent to preserve their historic and cultural character, it appears as though this PUD plan would constitute a significant redevelopment of the vacant property.

3. Master Plan. The applicant shall demonstrate that the proposed PUD is consistent with the adopted master plan.

**Remarks:** The future land use map shows the subject property in the Mixed Use designation, which is intended to permit a mixture of residential, office, and commercial land uses. This category may include redevelopment of existing areas or new construction and should promote pedestrian accessibility. The intended development appears to align well with the Plan's Mixed Use future land use category.

**PUD Plan and Rezoning Standards.** Section 15.10 of the Zoning Ordinance sets forth standards that shall be utilized by the Planning Commission and City Council in reviewing a PUD plan and request for PUD rezoning. These standards are below, along with our remarks on each.

1. The proposed PUD complies with the purpose and qualifying conditions of sections 15.01 and 15.02.

**Remarks:** The proposed PUD appears to comply with the purpose and qualifying sections of 15.01 and 15.02. However, there are a few objectives that may be questionable due to the current design of the plan. These are primarily related to open space.

2. The uses conducted within the proposed PUD, the PUD's impact on the community, and other aspects of the PUD are consistent with, and further implement the policies of, the adopted master plan.

**Remarks:** The future land use map shows the subject property in the Mixed Use designation, which is intended to permit a mixture of residential, office, and commercial land uses. This category may include redevelopment of existing areas or new construction and should promote pedestrian accessibility. The intended development appears to align well with the Mixed Use category. The Master Plan does not consider PUDs on the future land use map.

The PUD plan may be supported through some of the Master Plan's goals and objectives. The Master Plan's goal for Community Image promotes Lowell's image as a historic community with natural resources such as the Flat River. Objectives include measures to improve access and views to the Flat River and restoration of buildings to their original style. Encouraging river access and views may include "demolition of view blocking buildings and structures, building of paths, construction of view overlooks, and others." The proposed PUD plan does not propose additional buildings along the riverfront. The addition of a second story on the bus garage may contribute to diminishing the viewshed; however, the extent to which this would occur is unclear. The residential units in the former bus garage would allow those owners river views.

The Community Image goal also includes an objective to encourage the restoration of building fronts to their original style. By preserving the existing buildings on the site, the applicant may retain their original style. The development appears to support this objective. The applicant has submitted building elevations for phase 1. It does not appear that the new construction would significantly diminish the original historic character of the site. However, the City Council may request additional information regarding building styles and architecture in order to ensure that the building fronts and new construction would not diminish the historic character of the site.

The Master Plan also lists a Land Use goal to "promote a walkable community with stable neighborhoods, and conveniently located public, commercial, and service uses." Objectives include improved pedestrian access to the Flat River, a land use pattern to facilitate walking to and within the downtown area safer and easier, and encouragement of new development in and around the downtown area. The PUD plan appears to align well with the objective for encouraging new development in and around the downtown area. The placement of residential units at this location appears to support this objective of building off of the downtown as the heart of Lowell.

Lastly, the Master Plan defines Housing goals, desiring a variety of housing opportunities on a range of lot sizes to provide affordable housing. The applicant has not submitted any information regarding the targeted income level of these housing units. However, the primary housing types in the surrounding area are single-family residential homes, and some residential-over-retail dwellings along Main Street. The presence of attached condo units may provide diversity in the housing market through different types of units and lot size, as there are few attached condos in the City at present.

3. The proposed PUD shall be designed, constructed, operated, and maintained in a manner harmonious with the character of adjacent property, the surrounding uses of land, the natural environment, and the capacity of public services and facilities affected by the development.

**Remarks:** The Single or Two Family Residential district is located north and east of the subject property and the Public Facilities district is located south and west of the subject property. Uses on adjacent Public Facilities property include the Kent District Library and a small public park with a riverfront walkway. A school is also located in the immediate area. Because the proposed PUD is residential in nature, it appears that the use would be harmonious with the character of the surrounding uses. The PUD plan depicts a higher density than that allowed in the neighboring residential uses. However, because the subject property is also adjacent to the Public Facilities district and the riverfront walkway, the increased density may be more compatible and appropriate at this site, and offer a transition between the lower-intensity neighborhoods to the north and the more intense uses in downtown Lowell.

The subject property contains minimal natural features. The landscape plan submitted by the applicant indicates an increase in overall vegetative density on the site as a result of the development. Therefore, it appears that the natural environment will remain harmonious with the surrounding area.



Because this site was the former location of Unity School, public facilities and services are already available for use. It is expected that the capacity of public services and facilities would support the intended development. However, the City Council may request additional comments and approval from the City Engineer and DPW.

4. The proposed PUD shall not be hazardous to adjacent property or involve uses, activities, materials, or equipment that will be detrimental to the health, safety, or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, or glare.

**Remarks:** The proposed PUD is residential in nature and therefore not expected to involve uses, activities, materials, or equipment that will be detrimental to the health, safety, or welfare of persons or property through excessive production of traffic, noise, smoke, fumes, or glare. The development is likely to have some impact on traffic in the area, as 44 new housing units would eventually be created. Because the development can be accessed via King Street and Monroe Street, it appears as though traffic will be distributed so as not to overload one particular area. Further, many of the future residents may walk to destinations in downtown Lowell, reducing the number of vehicle trips needed.

5. The proposed PUD shall not place demands on public services and facilities more than current or anticipated future capacity.

**Remarks:** The City Council may request approval of public service and facility capacities by the City Engineer and DPW. This may be addressed as a condition of approval.

6. The proposed PUD shall satisfy all applicable local, state, and federal laws, rules and, regulations.

**Remarks:** This may be addressed as a condition of approval.

**Floodplain Overlay District Standards.** A portion of the subject property is located within the Floodplain Overlay District; therefore, the standards and regulations of Chapter 14 apply to all proposed uses in that district. Section 14.04 of the Zoning Ordinance sets forth additional standards that shall be utilized by the Planning Commission and City Council in reviewing the PUD plan and request for PUD rezoning. These standards are below, along with our remarks on each.

1. "Development, including the erection of structures and placement of manufactured homes, within the floodplain overlay district shall not occur except in accordance with the requirements of ... the following standards":

1. The requirements of this chapter shall be met.

**Remarks:** This may be addressed as a condition of approval.

2. The requirements of the underlying zoning district and applicable general provisions of this ordinance shall be met;

**Remarks:** Contingent upon the applicant's conformance to the applicable standards for PUD approval, this standard would be met.

3. All necessary permits shall have been issued by the appropriate local, state, and federal authorities, including a floodplain permit, or letter of no authority from the Michigan Department of Natural Resources under authority of Act 451, of the Public Acts of 1994, as amended. Where a permit cannot be issued prior to the issuance of zoning compliance permit, a letter from the issuing agency indicating intent to issue contingent only upon proof of zoning compliance shall be acceptable.

**Remarks:** The proposed project may require a Part 31 permit from the Michigan Department of Environmental Quality (DEQ). So far, no permits related to development in the floodplain have been submitted to our knowledge. This may be addressed as a condition of approval.

4. The proposed use and/or structure(s) shall be so designed as not to reduce the water impoundment capacity of the floodplain or significantly change the volume or speed of the flow of water.

**Remarks:** The City Council may request review by the City Engineer regarding the applicant's grading and storm water management design to ensure the floodplain capacity, volume, and speed of water will not be significantly changed.

5. Utilities, streets, off-street parking, railroads, structures, and buildings for public or recreational uses shall be designed so as not to increase the possibility of flood or be otherwise detrimental to the public health, safety, and welfare.

**Remarks:** Portions of land in phases 1 and 2 are within the 100-year floodplain. It appears as though utilities, streets, off-street parking, railroads, structures, and buildings for public or recreational uses are designed so as not to increase the possibility of flood or be otherwise detrimental to the public health, safety, and welfare. However, any infill or construction activity that displaces 200 cubic yards or more may require a compensating cut nearby so as not to increase the base flood elevation for the remainder of the area. The City Council may defer to the City Engineer regarding additional comments related to increased flood risk.

## 2. Specific base flood elevation standards:

1. On the basis of the most recent available base flood elevation data all new construction and substantial improvements shall have the lowest floor, including basements, elevated at least one (1) foot above the flood level; or for nonresidential structures, be constructed such that at or below base flood level, together with attendant utility and sanitary facilities, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that these standards are met and that the floodproofing methods employed are adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces and other factors associated with the base flood in the location of the structure. Such certification shall be submitted as provided in this ordinance and shall indicate the elevation to which the structure is floodproofed.

**Remarks:** The applicant has not submitted a plan detailing structural improvements related to flooding. It is unclear from the site plan whether the proposed developments in the floodplain will be elevated at least one foot above the flood level. The City Council may address this with the applicant.

2. The most recent flood elevation data received from the Federal Insurance and Mitigation Administration (FIMA) shall take precedence over data from other sources.

**Remarks:** This may be addressed as a condition of approval.

**Discussion.** It is recognized that the PUD approval process involves much collaboration and communication between various parties. This review is more complex than most due to the review procedures, property involved, and phased nature of the development. If approved, the PUD plan provides the basis to which site plans for subsequent phases must adhere, so it is imperative that potential issues or uncertainties regarding the

PUD plan be discussed at the project’s outset. With this in mind, the City Council should discuss the following topics:

- **Open space.** As a condominium development, open spaces are generally owned and maintained by a developer or condominium association. Undeveloped or improved open areas are often identified as a general common element. Accordingly, the applicant has indicated “open space” on all areas that are not proposed for development. However, the purpose of open space should be discussed. According to Section 15.06 (B) of the Ordinance, open space areas “shall be large enough and of proper dimensions so as to constitute a useable area, with adequate access...such that all properties within the entire PUD may reasonably utilize the available open space.” As identified by the Ordinance, open space areas are intended to provide usable areas for residents and be in joint ownership of all property owners within the PUD. The City Council may discuss whether all designated open space areas on the site plan are in agreement with the description of open space in Section 15.06 of the Ordinance. This may include discussion regarding the size, desired dimensions, access points, and potential utilization of such areas.

Additionally, the City Council may discuss maintenance of open spaces with the applicant. This may take the form of a property owner’s association or similar entity, which must be approved by the City. This may further describe the role of residents in contributing to the upkeep of the property and the arrangement of maintenance to ensure future upkeep of the property. Condominium bylaws and a master deed addressing these issues should be provided to the City for review prior to authorization.

- **Architectural compatibility.** It is recognized that the proposed development is a long-term project that will involve the collaboration of many parties. In order to ensure consistent architectural standards between each phase, it may be helpful for the City Council to discuss architectural compatibility with the surrounding properties. This may include a discussion of the applicant’s intended building forms, the role of architecture in preserving the historic character of the site, and use of similar building materials within each phase.
- **Proximity to downtown.** From a holistic planning perspective, this proposal seems to be consistent with the Master Plan and City’s vision for development through the preservation of historic buildings, potential contribution to a walkable community, and redevelopment of a vacant area. The placement of features in close proximity to the downtown area would likely support the economic development of downtown while offering significant improvement to an underutilized site. The site’s location would facilitate pedestrian traffic to the downtown area, enhancing residential connections. It would also seem to provide an appropriate transition between less dense residential uses and the downtown commercial and public uses. The City Council may further consider how this development’s location and function would impact the downtown area and its consistency with the Master Plan considering its proposed use, phased development, transitional function, and aesthetic impact.
- **Parking.** Concern was expressed from the Planning Commission and the public regarding the proposed parking on the site plan. The PUD is proposed to contain a total of 44 dwelling units in three phases, and the applicant proposes to serve these units with 49 parking spaces on the property. Section 19.07 of the Zoning Ordinance requires two parking spaces for each residential unit in a multiple-family use, for a total requirement of 88 parking spaces. Thus, the applicant is short of the minimum requirement by 39 spaces. Parking for the site is provided as follows:

Phase	# Units	Parking Required	Parking Provided	Difference
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1	14	28	22	-6
2	~16	32	10	-22
3	~14	28	17	-11
<b>Total</b>	<b>44</b>	<b>88</b>	<b>49</b>	<b>-39</b>

The applicant’s property is located within the MU Mixed Use district. Section 19.02(B) allows on-street or off-street public parking within 400 feet of the property to be counted toward the required minimum parking. The applicant has submitted a review of available parking within 400 feet of the proposed development, and has indicated that 103 spaces are within 400 feet, and that the parking requirements of the Zoning Ordinance are met.

In order to help reduce the number of public parking spaces being used by residents of Riverview Flats, the Planning Commission recommended that 18 spaces located at 238 High Street be permanently dedicated to the development and be allocated as Riverview Flats parking only. While not part of this PUD, 238 High Street is owned by the applicant and contains 18 parking spaces. If those 18 spaces were included in this PUD, it would reduce the number of additional public spaces needed to 21. The Planning Commissions found this acceptable, after reviewing relevant data from ITE and other sources.

It should be noted that these 21 public spaces that would be counted toward the required minimum are also used (and intended to be used) by the public, including Lowell residents, employees, and visitors. There is also a perception that parking downtown is scarce, and allowing a private developer to utilize public parking for future residents may, for some, be a cause for concern.

Further, it should also be noted that the City of Lowell Zoning Ordinance requires the same amount of parking (2 per dwelling) for all residential uses (single, two-family, and multi-family) and does not distinguish between urban and suburban areas, so it is possible that these standards may require more parking than is necessary for urban multi-family projects. Generally, fewer spaces are needed for higher-density urban developments than what is currently required in the City of Lowell Zoning Ordinance.

**Conclusion.** At the September 3, 2019 public hearing, the City Council should discuss the site and carefully consider any comments from the applicant and the public. In addition to the overall project, the following specific items should be discussed by the City Council:

1. Whether the applicant should provide relevant market data showing that the development in this location is appropriate.
2. The intended land use for the concrete area located in the southwestern portion of the subject property.
3. If the quality of construction will meet or exceed that of other buildings in and around the City.
4. Whether the applicant has sufficiently demonstrated if the proposed PUD is consistent with the adopted Master Plan.
5. Whether the capacity of public services and facilities is adequate and any additional questions regarding grading, stormwater management, and capacity of the floodplain.
6. Whether the lowest floor in the floodplain is elevated at least one foot above the base flood level.
7. Whether all necessary permits by the appropriate local, state, and federal authorities, including a floodplain permit, or whether a letter of no authority from the Michigan Department of Natural Resources under authority of Act 451, of the Public Acts of 1994, as amended, has been received. Where a permit cannot be issued prior to the issuance of zoning compliance permit, a letter from the

issuing agency indicating intent to issue contingent only upon proof of zoning compliance could be acceptable.

After the public hearing, the City Council may approve, approve with conditions, or deny the request, or it may table the request for further consideration and analysis. Should the City Council be inclined to make a decision regarding the application, we suggest that the decision be a tentative decision, subject to written findings that would be formally adopted at the next meeting.

In its recommendation of approval, the Planning Commission included the following conditions:

- a. Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.
- b. The proposed PUD shall satisfy all applicable local, state, and federal laws, rules and, regulations, including, but not limited to, all applicable requirements pertaining to barrier-free access and the Americans with Disabilities Act (ADA).
- c. The applicant shall comply with applicable local, state and federal laws, rules and regulations including the requirements of the City's Code of Ordinances, promulgated rules, regulations and policies of the City's Department of Public Works, the City Engineer and Department of Light and Power, and promulgated rules, regulations, and policies of the Lowell Area Fire Authority.
- d. All necessary permits shall have been issued by the appropriate local, state, and federal authorities, including a floodplain permit, or letter of no authority from the Michigan Department of Natural Resources and/or Department of Environment, Great Lakes, and Energy (EGLE) under authority of Act 451, of the Public Acts of 1994, as amended. Where a permit cannot be issued prior to the issuance of zoning compliance permit, a letter from the issuing agency indicating intent to issue contingent only upon proof of zoning compliance shall be acceptable.
- e. The most recent flood elevation data received from the Federal Insurance and Mitigation Administration (FIMA) shall take precedence over data from other sources.
- f. The applicant shall submit evidence that the requirements of Chapter 14, Floodplain Overlay District of the Zoning Ordinance are or will be satisfied.
- g. If it is determined that the work involved would require a compensating cut pursuant to EGLE requirements, such compensating cut shall occur at a location approved by the City and shall be subject to reasonable regulation and oversight by the City of Lowell.
- h. Consistent with Note 9 of Sheet C 2.0 stating that "as the site is riparian and within a floodplain, storm water management goals of the project focus on providing storm water quality improvements and maintaining onsite grading characteristics to provide storage for impending flood conditions." Since the site has a direct discharge to the Flat River, the applicant shall submit evidence to the City Engineer's satisfaction that demonstrates specific storm water quality Best Management Practices (BMPs).
- i. Site Plan review by the Planning Commission for phases 2 and 3 shall be required.
- j. Eighteen spaces located on 238 High Street as shown on the site plan shall be dedicated to parking for the proposed PUD. The applicant shall submit a copy of a restrictive covenant or similar instrument acceptable to the City Attorney confirming the common ownership and prohibiting the separate conveyance by way of sale or lease of either lot, and confirming that the 18 parking spaces are for the

exclusive use of Riverview Flats. Evidence of the recording with the Kent County Register of Deeds shall be provided to the City.

- k. The applicant shall work cooperatively with the Lowell City Council on the affected High Street area.

Mayor DeVore then opened it up for public comment.

Ron Janowski who resides at 520 N. Monroe St stated his wife and himself have lived in Lowell for 20 years and is in favor of the PUD development.

John Wenger, non-resident of the City of Lowell but on the Committe for the Summer Concert Series is not in favor of the PUD development and is concerned about the Summer Concerts parking. 100% opposed.

Justin St. John who resides at 305 High is in favor of the PUD development.

Jeff Dickerman who resides at 429 High St. stated he is not in favor of the PUD development. PUD only serves the applicant and not the community.

Eric Lundstrom, current resident of Vergennes Township, stated he is in favor of the PUD development and it will do nothing but enhance the beauty of Lowell.

Michelle Emaus who resides at 725 Lafayette stated she is in favor of forward movement but not in favor of the PUD development. Concerned with the 44 condos going in as there are already issues with parking. Does not see this as a positive.

City Clerk Susan Ullery read a letter from Gregory Gilmore who is the owner of the Flat River Grill and is in favor of the PUD development.

City Clerk Susan Ullery read a letter from Colonel Daniel Packard who is considering moving back to the area and is in favor of the PUD development.

City Clerk Susan Ullery read an email from Morgan Whitney who resides in Lowell and is not in favor of the PUD development.

City Clerk Susan Ullery also stated she has approximately 30 emails with signatures and stating they are in favor of the PUD development.

There were no comments from the Councilmembers.

Mayor Devore then closed the Public Hearing.

- b. LCTV Distribution.

City Manager Michael Burns stated at the request of the LCTV Fund Advisory Committee, Council has committed to giving them prior notice of the amount that will be available for distribution. Burns recommends that all of the spendable balance in the fund be available to the committee so that you can receive their recommendations for the 2019-2020 fiscal year.

IT WAS MOVED BY YANKOVICH and seconded by SALZWEDEL that the Lowell City Council authorizes all of the spendable balance of the LCTV Fund for the 2019-2020 fiscal year to be available for recommendations from the LCTV Fund advisory committee.

YES: Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield and Mayor DeVore.

NO: None.

ABSENT: None.

MOTION CARRIED.

c. Resolution 28-19 – Prisoner of War/Missing in Action Recognition Day.

Mayor DeVore stated the Michael J. Bost Chapter 18 of the Vietnam Veterans of America will observe Prisoner of War/Missing in Action Recognition Day on Friday, September 20, 2019. A brief ceremony will be held at 2:00 p.m. in the chapel of the Michigan Home for Veterans in Grand Rapids.

IT WAS MOVED BY CHAMBERS and seconded by CANFIELD that the Lowell City Council adopt Resolution 28-19 proclaiming Friday, September 20, 2019 as Prisoner of War/Missing in Action Recognition Day.

YES: Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield, Mayor DeVore, and Councilmember Salzwedel.

NO: None.

ABSENT: None.

MOTION CARRIED.

6. **BOARD AND COMMISSION REPORTS.**

Councilmember Canfield stated the LARA board met last week and Dave Austin was there from Williams & Works. We have commitments of approximately five million of the 6.5 million that we need to connect the trail. We have a couple of easements we are working on and we need to have the rest of the money commitments by October 4, 2019. This is a 2021 or 2022 construction project so if we still aren't there financially, then it will get withdrawn and reapplied for in the spring.

7. **MANAGERS REPORT.**

City Manager Michael Burns stated the following:

- Reminder: Committee of the Whole meeting Monday, September 16, 2019 at 5:30, MERS will be there to discuss the actuarial. The Committee of the Whole meeting that was supposed to be this evening, has been moved to October 7, 2019 at 5:30.
- Lowell was selected out of this region from the American Water Works Association for being the best tasting water for the region. They are actually going to be having their sampling at their state conference next week up in Grand Traverse. This is the fourth time we have been a finalist and we have never won it, but hopefully, that will change this year.

8. **APPOINTMENTS.**

We have one application from Daniel Crawford who would like to take Dave VanKeulen position on the

Light & Power Board. It was a consensus of the City Councilmembers to appoint Daniel Crawford to The Light & Power Board.

Tina Cadwallader and Andrew Schrauben would like to continue on the Lowell Light & Power Board. It was a consensus of the City Councilmembers to reappoint Tina Cadwallader and Andrew Schrauben.

IT WAS MOVED BY MAYOR DEVORE and seconded by SALZWEDEL to appoint Jim Hodges as the City's representative on the Board of Directors of Lowell Area Housing, Inc. (Schneider Manor) and as a trustee on the Advisory Board of the Philip H. Schneider Trust.

YES: 5. NAY: 0. ABSENT: 0. MOTION CARRIED.

9. **COUNCIL COMMENTS.**

Councilmember Chambers thanked the Ledger for their great article they wrote on the Lego showboat.

10. **MOTION TO GO INTO CLOSED SESSION.**

IT WAS MOVED BY CANFIELD and seconded by YANKOVICH to go into closed session at 8:50 p.m.

YES: Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich and Councilmember Chambers.

NO: None. ABSENT: None. MOTION CARRIED.

11. **MOTION TO GO BACK INTO OPEN SESSION.**

IT WAS MOVED BY CANFIELD and seconded by CHAMBERS to go back into open session at 9:37 p.m.

YES: Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, and Councilmember Canfield.

NO: None. ABSENT: None. MOTION CARRIED.

City Attorney Dick Wendt then explained the process of Council going through the conditions the Planning Commission recommended and stating yes or no to each one and then if approval, to direct city staff to prepare the ordinance approving the PUD with the approved conditions.

Andy Moore with Williams & Works then stated in its recommendation of approval, the Planning Commission included the following conditions:

- a Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.

All the commissioners agreed yes.

- b The proposed PUD shall satisfy all applicable local, state, and federal laws, rules and, regulations, including, but not limited to, all applicable requirements pertaining to barrier-free access and the



Americans with Disabilities Act (ADA).

All the commissioners agreed yes.

- c The applicant shall comply with applicable local, state and federal laws, rules and regulations including the requirements of the City's Code of Ordinances, promulgated rules, regulations and policies of the City's Department of Public Works, the City Engineer and Department of Light and Power, and promulgated rules, regulations, and policies of the Lowell Area Fire Authority.

All the commissioners agreed yes.

- d All necessary permits shall have been issued by the appropriate local, state, and federal authorities, including a floodplain permit, or letter of no authority from the Michigan Department of Natural Resources and/or Department of Environment, Great Lakes, and Energy (EGLE) under authority of Act 451, of the Public Acts of 1994, as amended. Where a permit cannot be issued prior to the issuance of zoning compliance permit, a letter from the issuing agency indicating intent to issue contingent only upon proof of zoning compliance shall be acceptable.

All the commissioners agreed yes.

- e The most recent flood elevation data received from the Federal Insurance and Mitigation Administration (FIMA) shall take precedence over data from other sources.

All the commissioners agreed yes.

- f The applicant shall submit evidence that the requirements of Chapter 14, Floodplain Overlay District of the Zoning Ordinance are or will be satisfied.

All the commissioners agreed yes.

- g If it is determined that the work involved would require a compensating cut pursuant to EGLE requirements, such compensating cut shall occur at a location approved by the City and shall be subject to reasonable regulation and oversight by the City of Lowell.

All the commissioners agreed yes.

- h Consistent with Note 9 of Sheet C 2.0 stating that "as the site is riparian and within a floodplain, storm water management goals of the project focus on providing storm water quality improvements and maintaining onsite grading characteristics to provide storage for impending flood conditions." Since the site has a direct discharge to the Flat River, the applicant shall submit evidence to the City Engineer's satisfaction that demonstrates specific storm water quality Best Management Practices (BMPs).

All the commissioners agreed yes.

- i Site Plan review by the Planning Commission for phases 2 and 3 shall be required.

All the commissioners agreed yes.

- j Eighteen spaces located on 238 High Street as shown on the site plan shall be dedicated to parking for the proposed PUD. The applicant shall submit a copy of a restrictive covenant or similar instrument

acceptable to the City Attorney confirming the common ownership and prohibiting the separate conveyance by way of sale or lease of either lot, and confirming that the 18 parking spaces are for the exclusive use of Riverview Flats. Evidence of the recording with the Kent County Register of Deeds shall be provided to the City.

All the City Council agreed **no**.

- k The applicant shall work cooperatively with the Lowell City Council on the affected High Street area.

All the commissioners agreed yes. **So item k became item j.**

**Commissioners all agreed item k as follows:**

- k High Street shall have curb and gutter and sidewalk down the North side, done by the developer and to be completed in Phase 1.

Mayor DeVore then directed city staff to prepare the ordinance approving the PUD with the above approved conditions.

12. MOTION TO GO BACK INTO CLOSED SESSION.

IT WAS MOVED BY CANFIELD and seconded by CHAMBERS to go back into closed session for pending litigation. at 9:48 p.m.

YES: 5                      NO: None.                      ABSENT: None.                      MOTION CARRIED.

13. MOTION TO GO BACK INTO OPEN SESSION.

IT WAS MOVED BY CANFIELD and seconded by CHAMBERS to go back into open session at 10:36 p.m.

YES: 5                      NO: None.                      ABSENT: None.                      MOTION CARRIED.

14. ADJOURNMENT.

IT WAS MOVED SALZWEDEL and seconded by CHAMBERS to adjourn at 10:37 p.m.

YES: Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield and Mayor DeVore.

NO: None.                      ABSENT: None.                      MOTION CARRIED.

DATE:

APPROVED:

\_\_\_\_\_  
Mike DeVore, Mayor

\_\_\_\_\_  
Sue Ullery, Lowell City Clerk

