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August 17, 2007

Mt. Pleasant, MI 48858

Re: Open Meetings Act complaint

I have reviewed your complaint of August 3, 2007, concerning the allegation that the Mt. Pleasant Planning Commission violated the Open Meetings Act (herein "OMA") relative to the notice of its August 2nd work session meeting. The substance of your complaint, is that the Planning Commission failed to provide sufficient notice of that meeting, pursuant to the requirements of MCL 15.265.

Upon receipt of your complaint, I contacted Peter Orlik, Planning Commission Chairperson, and Kathy Grinzinger, City Manager. I advised them of the allegation, and requested any written response they, or any other City officials would care to make. I received responses from Mr. Orlik and Robert Flynn, City Clerk. Additionally, I have reviewed the videotape of the August 2nd meeting, and, of course, the pertinent statutes and case law.

It is your contention that insufficient notice was given for this "special meeting" of the Planning Commission, because said notice was not posted in a location open to the public 18 hours prior to the commencement of the meeting. Mr. Flynn advises that a notice of the meeting was posted on July 30, 2007, in the lobby of City Hall. He further indicates that while it is the practice of the City to post notice of meetings on its website and cable television, the staff person charged with that responsibility was on vacation, and notice of this specific meeting was therefore not posted in those two locations.

It is recognized that the Mt. Pleasant Planning Commission is, a "public body" and the meeting convened on August 2nd was a "meeting", within the definition of the OMA. MCL 15.262. It is further accepted that the work session meeting conducted on that date was a "special meeting" as recognized by MCL 15.265.

The notice requirements of the OMA are provided in MCL 15. 265, which states in pertinent part:

"(1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting."

Public notice must be posted at the public body's principal office, and can also be posted at any other location that the public body deems appropriate. MCL 15.264.

As you indicated in your complaint, the Attorney General has opined that it is necessary that public access must be afforded to meeting notices, to insure compliance with the OMA. His discussion of this issue is contained within OAG 5724 (June 20, 1980). The Opinion states:

"It must be recognized that if it were to be held that the Act's minimum 18-hour notice requirement may be met by a public body without consideration as to public accessibility to the notice, it would then be possible to post a notice of a public meeting at a location closed to the public immediately following the posting. For example, the circumstances could arise where the notice of a Monday morning meeting is posted in the afternoon of the prior Friday at a principal office closed for the weekend. Although notice of the Monday morning meeting would have been posted well over 18 hours prior to the meeting, such a procedure would not notify the public of the meeting as contemplated by the Legislature.

It is my opinion, therefore, that the minimum 18-hour notice requirement for a special meeting of a public body is not fulfilled if the public is denied access to the notice for any part of the 18 hours. The requirement may be met by posting at least 18 hours in advance of the special meeting on the outside of the building which houses the principal office of the public body, at the main entrance." 1979-1980 OAG 5724, p 841-842

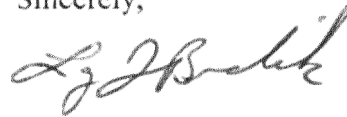
It is my opinion, that the statute, as interpreted by the above *Opinion*, does not require that notices of special meetings be accessible to the public, during the 18 hour period *immediately preceding* the meeting itself, but rather, that the public must have access to the notice at least a full 18 hours before the meeting is conducted. If it were the former, I believe the Legislature and Attorney General, would have specifically so stated. Additionally, such an interpretation would nullify a meeting notice, for example, which was posted a month prior to a Monday morning meeting, but not placed outside the public building the Friday before.

Since I am advised that the notice of the August 2nd work session meeting of the Planning Commission was posted at City Hall, in a place accessible to the public, on July 30th, three days before the meeting, it is within the 18 hours time period for public inspection. It is unfortunate

that notice of the meeting was not posted on the website or cable television channel. I understand, however, that the Planning Commission discussed at its July 12' public meeting, setting another work session for this particular date. Such public discussion does not indicate "there was any desire by [the public entity] to conduct its meeting out of public sight or that it in fact did so." *Arnold Transit v City of Mackinaw* 99 Mich App 266, 274 (1980).

Consequently, it is my opinion that there was not violation of the OMA relative to the posting of notice of the August 2nd work session meeting of the Mt. Pleasant Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "L. J. Burdick", written in a cursive style.

Larry J. Burdick
Prosecuting Attorney

cc: Peter Orlik
Kathy Grinzinger
Robert Flynn