



# City Commission Agenda

**SPECIAL MEETING**

**September 21, 2021**

### City Commission Meeting Agenda

Mayor Mapes will ask City Commissioners for additions and deletions to the agenda. All Commissioners will be given an opportunity to review late arriving supporting materials prior to roll call.

#### Roll Call

#### Pledge of Allegiance

Approval of Minutes

#### *Requested Action*

#### A. Petitions:

#### B. Communications:

1. Communications from members of the public regarding the conditional rezoning proposal for the Warwick Living Center. *Receive*

2. Letter of resignation from Planning Commission Chairman Don Ayers. *Receive*

3. City counsel's response to communication from Michael Selmon regarding Planning Commission. *Receive*

#### C. Hearings:

#### D. Consent Agenda:

#### E. Requests for Purchase:

#### F. Recommendation on Bids:

#### G. Resolutions:

#### H. Ordinances:

#### I. Agreements:

#### J. Reports:

#### K. Appointments:

#### L. Unfinished Business:

#### M. New Business:

1. ARPA Grant status update from Finance Director.

2. Presentation for proposed water main on North State Street.

3. Consideration of a request from the City Manager to conduct a closed session, permitted under Section 8(c) of the Open Meetings Act MCL 15.268, for strategy/negotiation of a collective bargaining agreement.

a. Consideration of a resolution to approve collective bargaining agreement.

4. Conduct of interviews for potential interim city manager candidates.

#### Appropriations

#### Commissioner's Comments

**Invitation to Public**

**(Subject:** Pursuant to Article II of the City Code, individuals requesting to address the City Commission may do so by moving to the podium and being recognized by the Mayor, following which they should state their name and address for the record. Individuals should address their comments to the Mayor. Comments are limited to a maximum of five (5) minutes per person, unless the Commission grants further time.)

**Adjournment**



Mayor Mapes and City Commission,

Due to the fact it appears you have no confidence in my or the rest of the Alma Planning Commission to make recommendations you can approve, I respectfully submit my resignation to both the Planning Commission and the Zoning Board of Appeals on this day September 14, 2021.

Thank you,

Donald L. Ayers

A handwritten signature in black ink, appearing to read 'Donald L. Ayers', with a long horizontal flourish extending to the right.

**FORTINO, PLAXTON & COSTANZO, P.C.**

**ATTORNEYS AT LAW**

214 EAST SUPERIOR STREET

**ALMA, MICHIGAN 48801**

WWW.FPMC.COM

TELEPHONE (989) 463-2101

FAX (989) 463-2104

ANTHONY G. COSTANZO

PAMELA S. MUNDERLOH

OF COUNSEL

CHARLES M. FORTINO

ALFRED J. FORTINO

(1914-2007)

KENNETH D. PLAXTON

(1921-2010)

17 September 2021

Matthew Schooley, City Mgr.  
City of Alma  
525 E. Superior Street  
Alma, Michigan 48801

Re: Letter received from Michael Selmon dated Sept 13, 2021

Dear Mr. Schooley:

You have asked me to render an opinion as to the claims raised by Mr. Selmon's September 13, 2021 letter. As we have discussed, the letter alleges that the Planning Commission acted in violation of the City Code when they ruled on your Motion to Recommend Denial of the Conditional Rezoning Request.

It is my opinion that the Planning Commission did not violate any City Ordinance when rendering their decision, and as such their decision was valid, constituting a viable recommendation to the City Commission.

First, Mr. Selmon points out that Alma City Ordinance 40-20 (a) specifies that the Planning Commission shall consist of nine (9) members. In addition, he indicates that Section 40-20 (c) specifies that the commission shall include three (3) ex officio members, the city manager or a person designated by him or her, the mayor, and one (1) member of the city commission. Further, Mr. Selmon notes that Section 40-20 (g) states that these three (3) members shall constitute not more than one-third of the total membership of the commission.

Mr. Selmon then claims that those code sections require that the Planning Commission consist of at least nine (9) members, since the three (3) ex officio members would constitute more than one-third of the commission if the commission consists of less than nine (9) members.

Mr. Selmon fails to recognize however that with respect to the subject conditional rezoning request offered by the Masonic Home and Bethany Christian Services, Alma Mayor Greg Mapes recused himself from participation in discussion deliberation and vote. Thus, there were only two (2) ex officio members on the commission with respect to that question. Given that there were then six (6) total planning commission Members, the two (2) ex officio members represented the maximum allowable one-third of the six (6) person planning commission. Thus,

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the deliberation and vote, since Mayor Mapes did not participate, did not violate the prohibition against more than one-third of the commission being made up of the ex officio members.

Further, Mr. Selmon's insinuation that the planning commission somehow cannot act with less than nine (9) members at a meeting is clearly not correct, given that there are multiple provisions in the Code of Ordinances that talk of a quorum consisting of at least five (5) members. Further, the ordinances clearly contemplate the situation that exists now, where there are vacancies in the planning commission. The fact that vacancies exist, certainly does not render decisions made by the planning commission invalid, just because those decisions are made by a planning commission consisting of less than nine (9) members.

Mr. Selmon then asserts that Section 40-26 (b) of the Code of Ordinances renders the planning commission's recommendation invalid. That subsection deals with the majorities required to pass various items that might be before the planning commission. With respect to approval of a proposed Master Plan, subsection 40-26 (b) requires "the affirmative vote of two-thirds of the total number of seats for members of the commission, **regardless if vacancies or absences exist or not.**" On the other hand, the next sentence in subsection b speaks to the requirement with respect to other actions of the planning commission. That portion of subsection b reads "any other action of the planning commission shall be by a majority of the total number of seats." The verbiage "for members of the commission, regardless of vacancies or absences exist or not" is not included in the sentence relative to the passage of other action items by the planning commission besides the Master Plan. Clearly, if the framers of this ordinance wished to mandate that with respect to other actions of the planning commission, they must be passed by a minimum of five (5) votes, they would have put that language at the end of that sentence, just as they had put that language at the end of the sentence above, dealing with the Master Plan. The fact that the framers of this legislation chose not to place the additional verbiage at the end of the sentence relative to other action of the planning commission, indicates that that requirement did not apply to other actions of the planning commission. Currently there are seven (7) members of the planning commission. The total number of seats on the planning commission as it exists today is seven (7). The recommendation to deny the rezoning petition passed by a 4-2 margin. Four (4) votes is all that was needed to pass that motion, given the language of Section 40-26. As such, the planning commission did not violate Alma City Ordinances when they made that recommendation.

Finally, Mr. Selmon asserts that the fifth factor listed in Alma City Ordinance 60-381 (b) (5) is not a proper grounds for a recommendation to deny a rezoning petition. Section 60-381 (b) (5) requires that an amendment shall not be approved unless these (Factors 1-4) and other identified facts be affirmatively resolved in terms of the general health, safety, welfare, comfort and convenience of the citizens of the city or of other civil divisions, where applicable. Apparently it is Mr. Selmon's position that subsection (b) (5) is not a standalone factor on which a recommendation to deny may be based. In making that assertion, however Mr. Selmon ignores the second sentence of that subsection (b) (5), which states that an amendment shall not be

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approved unless these **and other identified facts** be affirmatively resolved in terms of the general health, safety, welfare, comfort and convenience of the city or of other civil divisions, where applicable. I believe it was the decision of the planning commission that the division in the community between those in favor of this request, and those against the request was such that granting the request could not be said to be affirmatively resolved in terms of the general health, safety, welfare, comfort, and convenience of the citizens of the city. It is my opinion that that finding fit within the parameters of subsection (b) (5), such that the recommendation to deny by the planning commission did not violate Section 60-381.

If you need anything further from me or have any questions relative to the above feel free to call.

Thank you for your consideration.

Sincerely,

FORTINO, PLAXTON & COSTANZO, PC

By:   
Anthony G. Costanzo

AGC:dks