

# Southgate City Council Agenda

## Council Chambers

Wednesday July 18, 2018

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6:30pm **Work Study Session**

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1. Officials Reports
2. Discussions regarding agenda items.

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7:00 pm **Regular Meeting**

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### *Pledge of Allegiance*

**Roll Call:** Colovos, Farrah, George, Graziani, Rauch, Rollet, Zamecki.

**Minutes:**

1. Work Study Session Minutes dated July 5, 2018.
2. Regular City Council Meeting Minutes dated July 5, 2018.

**Scheduled Persons in the Audience:**

**Consideration of Bids:**

**Scheduled Hearings:**

**Communications "A" –**

Memo from Administrator; Re: Retention Agreement with Edelson PC for Potential Opioid Litigation

**Communications "B" – (Receive and File)**

**Ordinances:**

1. First Reading –Rezoning of property at 14005 Allen Rd from R-1B (Single Family Residence) to C-1 (Community Business)

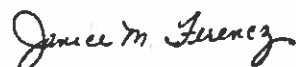
**Old Business:**

**New Business:**

**Unscheduled Persons in the Audience:**

**Claims & Accounts: Warrant #1357      \$1,811,360.71**

**Adjournment:**



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**Janice M. Ferencz, City Clerk**

City Council

## **Work Study Session**

July 5, 2018

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An Informal Meeting of the Council of the City of Southgate was held on July 5, 2018 at 6:30 P.M. in the Council Chambers of the Municipal Building, 14400 Dix-Toledo Highway, Southgate, Michigan.

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Present: Bill Colovos, Mark Farrah, Karen George, John Graziani, Phillip Rauch, Christopher Rollet, Dale Zamecki

Absent:

Also Present: Mayor Joseph G. Kuspa, City Administrator Dustin Lent, Assistant City Administrator/Finance Director David Angileri, City Attorney Brandon Fournier, City Engineer John Miller, City Clerk Jan Ferencz, Public Safety Director Jeff Smith, Police Chief Brett Selby, Fire Chief Mike Sypula, Department of Public Services Director Bob Tarabula, Building Inspections Director Bob Casanova and Parks and Recreation Director Julie Goddard.

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Discussion took place on the following item scheduled for action at the regular meeting:

- Waiver of Bid / Purchase of new Police Vehicle
- Ordinance no. 999 rezoning of property at 11601 Allen Road

This meeting ended at 6:40 pm.

# City of Southgate

## Regular City Council Meeting

### July 5, 2018

A Regular Meeting of the Council of the City of Southgate was held in the Municipal Council Chambers, 14400 Dix-Toledo Highway, Southgate, Michigan on Wednesday, July 5, 2018 and was called to order at 7:00 PM by Council President John Graziani.

**This meeting began with the Pledge of Allegiance, followed by roll call.**

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Present: Bill Colovos, Mark Farrah, Karen George, John Graziani, Phillip Rauch, Christopher Rollet, Dale Zamecki

Absent:

Also Present: Mayor Joseph G. Kuspa, City Administrator Dustin Lent, City Attorney Brandon Fournier, Assistant City Administrator/Finance Director David Angileri, City Engineer John Miller, City Clerk Jan Ferencz, Director of Public Safety Jeff Smith, Police Chief Brett Selby, Fire Chief Mike Sypula, Building Inspections Director Bob Casanova, Director of Public Services Bob Tarabula and Parks & Recreation Director Julie Goddard.

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#### **Minutes:**

Moved by Rollet, supported by George, RESOLVED, that the minutes of the City Council Work Study Session dated June 20, 2018 be approved as presented. Carried unanimously.

Moved by Colovos, supported by Rauch, RESOLVED, that the minutes of the Regular City Council Meeting dated June 20, 2018 be approved as presented. Carried unanimously.

#### **Scheduled Persons in the Audience:**

**1. Pete Alley, Goddard Road, Southgate, MI.**

Jeffrey Fantow, Mr. Alley's attorney, described all the issues Mr. Alley has dealt with for the past four years living next to Olive Cement. The City is working on some resolutions. Council advised the two parties to try to work together for resolution.

#### **Communications "A":**

- Memo from Director of Public Safety; Re: Waiver of Bid/Purchase Approval**, moved by Zamecki, supported by Colovos, RESOLVED that the Southgate City Council hereby waives the bid procedure and authorizes purchase of a replacement of one Ford Police Interceptor Utility Vehicle to Southgate Ford (16501 Fort St., Southgate, MI 48195) in the amount of \$29,633. BE IT FURTHER RESOLVED THAT the insurance reimbursement will cover \$22,248.30 and the remaining balance of \$7,384.70 will be covered in the Capital Fund through the sale of the lease on the ATT Tower and sale of land for this purchase.

Motion carried unanimously.

# Regular City Council Meeting

## July 5, 2018

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### **Ordinances:**

Moved by George, supported by Zamecki, RESOLVED that the Southgate City Council gives the second reading to adopt an ordinance of the City of Southgate Codified Ordinances to rezone an approximately twenty-five (25) acre parcel no. 83-53-003-99-0008-704 located at the northeast corner of Allen and Brest Road from C-2 (General Commercial) to RM (Multi-Family Residential). This ordinance will be otherwise known as Ordinance no. 999.

Motion carried unanimously.

### **Unscheduled Persons in the Audience:**

Gerald Wahl, 13390 Fordline, discussed the warning he received to remove his garden and the issues he was having with a neighbor feeding the birds. The animal control has been addressing these issues.

### **Claims and Accounts:**

Moved by Farrah, supported by Zamecki, RESOLVED, that Claims and Accounts be paid as outlined on Warrant # 1356 in the amount of \$1,705,761.

Motion carried unanimously.

### **Adjournment:**

Moved by Rauch, supported by Rollet, RESOLVED, that this Regular Meeting of the Southgate City Council be adjourned at 7:35 P.M. Carried unanimously.

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John Graziani  
Council President

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Janice Ferencz  
City Clerk

**JOSEPH G. KUSPA**  
*Mayor*

**JANICE M. FERENCZ**  
*City Clerk*

**JAMES E. DALLOS**  
*Treasurer*



**City of Southgate**  
**Celebrating 60 Years!**

- CITY COUNCIL -

**JOHN GRAZIANI**  
*Council President*

**MARK FARRAH**

**KAREN E. GEORGE**

**BILL COLOVOS**

**DALE W. ZAMECKI**

**PHILLIP J. RAUCH**

**CHRISTOPHER P. ROLLET**

**Memorandum**

**To:** Honorable City Council Members

**From:** Dustin Lent, City Administrator

**Date:** July 16, 2018

**Re:** Retention Agreement with Edelson PC for Potential Opioid Litigation

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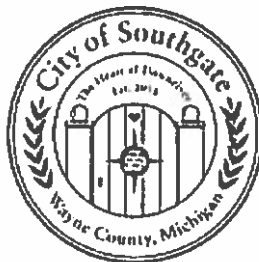
Administration has reviewed the recommendation from city attorney Edward Zelenak regarding the opioid litigation. The Edelson Law firm out of Chicago has undertaken a form of Class Action litigation on behalf of individual communities across the United States to seek recovery for public safety and administrative costs that result from responses to opioid matters. The Edelson Group is representing several cities and counties in Michigan already. There is no charge or cost to the city to enter into this litigation.

Your favorable consideration of this matter is requested.

JOSEPH G. KUSPA  
*Mayor*

JANICE M. FERENCZ  
*City Clerk*

JAMES E. DALLOS  
*Treasurer*



**City of Southgate**  
**Celebrating 60 Years!**

- CITY COUNCIL -

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*Council President*

MARK FARRAH

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BILL COLOVOS

DALE W. ZAMECKI

PHILLIP J. RAUCH

CHRISTOPHER P. ROLLET

July 16, 2018  
Honorable Mayor and Council  
City of Southgate  
Southgate, Michigan 48195

RE: Opioid Litigation

Dear Members of City Council,

I have been reviewing the attached proposed litigation concept with the administration for several months.

The Edelson Law Firm of Chicago has undertaken a form of Class Action litigation on behalf of individual communities across the United States to seek recovery for public safety and administrative costs that result from responses to Opioid matters.

This action is patterned after the Tobacco litigation, with recovery directed at participating municipalities, in contrast to the state government receiving any proceeds.

The Edelson Group is representing several cities and counties in Michigan already; there is an historical success rate with these lawyers in suing the Opioid manufacturers and distributors.

I recommend that you consider participating. There is no charge or cost to the city. The public safety costs and time expended in response to overdoses is becoming insurmountable, and studies and evidence related thereto establish culpability on the part of the manufacturers and distributors.

Very truly yours,

EDWARD M. ZELENAK

EMZ:sh

**Edelson PC**

350 North LaSalle Street, 13th Floor, Chicago, Illinois 60654  
t 312.589.6370 | f 312.589.6378 | www.edelson.com

February 21, 2018

**VIA ELECTRONIC MAIL**

Mayor Joseph G. Kuspa  
CITY OF SOUTHGATE  
14400 Dix Toledo Road  
Southgate, Michigan 48195

***Re: Retention Agreement***

Dear Mayor Kuspa:

On behalf of Edelson PC (“EPC”), we would like to take this opportunity to thank you for selecting our firm to represent the City of Southgate (“City”) with respect to its recovery efforts against the opioid manufacturers, distributors, and other related parties, whether through litigation, regulatory changes, or legislative efforts (the “Opioid Matter”). This letter details the scope of EPC’s representation of the City, as well as the method of compensation for such representation. By signing this retention agreement, you will have retained the law firm of Edelson PC as well as such attorneys as may work with us to represent you in the aforementioned matter.

1. **Client; Scope of Representation**

EPC will represent the City in its investigation into, and the potential litigation of, the Opioid Matter. The representation shall also include, as needed, providing advice to the City, City Council and other City governmental entities with respect to such investigation and litigation.

2. **Opinions**

Any beliefs or opinions that we express about the City’s claims, various courses of action, or anticipated results are only our best professional estimates. They are necessarily limited by our knowledge of the relevant facts at the time the opinions are expressed and the law then in effect. Nothing in EPC’s engagement with the City should be construed as a promise or guarantee of any particular outcome.

3. **Compensation**

If we do file suit on behalf of the City, we will represent you on a contingent fee basis. The City shall have no obligation to pay EPC attorneys’ fees or expenses unless the City achieves a recovery, settlement, and/or judgment in the Opioid Matter. In the event that the City achieves a recovery, settlement, or judgment in the Opioid Matter, the City agrees that Edelson PC will be entitled to recover attorneys’ fees according to the following schedule:

- 23% of the net recovery if the matter is resolved pre-complaint.
- 28% of the net recovery if the matter is resolved after the complaint is filed but before summary judgment briefing is completed either in the City's lawsuit or in any related consolidated proceeding (e.g., federal MDL).
- 32% of the net recovery if the matter is resolved after summary judgment briefing is completed in either the City's lawsuit or in any related consolidated proceeding (e.g., federal MDL).

These calculations shall apply if the City achieves any recovery, settlement, and/or judgment in the Opioid Matter in any form of proceeding or process. It is also understood that for their role as local counsel, Mancini Schreuder Kline PC will receive reasonable attorneys' fees in an amount equal to thirty percent of the net attorneys' fees recovered by EPC on account of the City's claims. This percentage will come from the fees recovered by EPC and are not additional fees. You also agree, that to the extent there is a recovery, that you will reimburse EPC all reasonable costs.<sup>1</sup> If the City does not achieve any recovery, the City will not be responsible for any costs or attorneys' fees.

#### 4. Staffing

Although EPC reserves the right to staff all matters as we see fit, we intend to assign at least the following attorneys to this matter: Jay Edelson, Rafey Balabanian, Ben Richman, Chris Dore, Ari Scharg, and David Mindell. Additionally, for their role as local counsel, Charles Mancini of Mancini Schreuder Kline PC will participate. You understand that we may determine to associate with other attorneys to more efficiently and effectively represent the City in this matter and that we may share a percentage of any attorneys' fees awarded and/or costs and expenses reimbursed with such attorneys. Prior to doing so, we will inform the City of the same.

#### 5. Confidentiality and Evidence Preservation

Should litigation in this matter ensue, the City understands that it may have to produce evidence to support its claims. We understand that the City may object to the opposing party's unchecked access to its information. We will vigorously oppose the production of any irrelevant information and seek protective orders that limit access to any evidence that contains confidential information (including attorney-client communications). All information,

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<sup>1</sup> The costs shall include, without limitation: client expenses, travel costs, court costs, fees and expenses of consulting and testifying experts, court reporters, videographers, deposition and transcription costs, external document reproduction, coding and organization services, meeting expenses, travel expenses of experts, investigative services, jury consultants, costs of photography, exhibits, and graphic design or other media used to present or illuminate evidence or argument. EPC will seek the City's prior approval for any costs that exceed five thousand US dollars (\$5,000). Finally, we do not charge clients for in-house copying, long distance telephone calls, or in-service Westlaw/LEXIS charges.



documents, records, reports, data or other materials furnished by the City to EPC or other such information, documents, records, data or other materials to which EPC has access during the course of rendering services pursuant to this retention agreement that are deemed confidential shall be treated as such and shall remain the property of the City. EPC shall not make oral or written disclosure of any confidential information (other than as necessary for its performance under this retention agreement) without the prior written approval of the City.

Please be reminded that in order to protect the confidentiality of both the City's communications with us and our advice to the City under the attorney-client privilege, it is important that the City not divulge sensitive information to anyone who is not within the protection of the privilege.

Please also understand that the City has an obligation to preserve evidence, including electronic evidence such as its electronic communications with third parties. The City must preserve evidence that common sense would dictate is relevant to the claims and defenses in question. We should communicate prior to the City destroying or disposing of any evidence that might be relevant to the matter. The City should also suspend any routine document destruction policies that it has in place and refrain from implementing new document destruction policies while the matter is ongoing.

#### 6. Term of Engagement

EPC will endeavor to represent the City promptly and efficiently, and we anticipate a mutually satisfactory relationship. The City, however, has the right to terminate EPC's services upon written notice at any time. EPC also has the right to terminate its services upon written notice, if it discovers that the City has misrepresented or failed to disclose material facts to us, if it fails to cooperate with a reasonable request, or in the event EPC determines, in its sole discretion, that continuing services on behalf of the City would create a conflict of interest or be illegal, unethical, impractical, improper or otherwise inappropriate. Following such termination, any otherwise non-public information the City has supplied to EPC that is retained by us will be kept confidential in accordance with applicable rules of professional responsibility or returned to the City as the parties hereto may agree in writing.

#### 7. Conflict

EPC may represent other governmental entities (which could include municipalities, counties, and states) and private parties (which could include unions and self-insured companies) in opioid related litigation. While each matter will be brought as a separate suit or through separate claims, EPC will be seeking the maximum amount for each client from a finite pool of money. In the event of global or aggregate settlement discussions, you will be informed of all material terms of any such settlement, including what other EPC clients will receive if the settlement is accepted. In the unlikely event that any actual or potential conflicts do later emerge about the division of such monies or other conflicts, EPC will, at its own cost, bring in independent attorneys to represent each parties' interests.

8. Binding Nature of Agreement; Choice of Law; Lien and Termination

This retention agreement is meant to bind and benefit the heirs and successors of each of the parties to this agreement.

This retention agreement shall be construed in accordance with the laws of the state of Michigan, without regard to rules governing conflicts of law.

The City hereby grants EPC a lien on any claims, causes of action, or recovery that it obtains, whether through settlement, judgment or otherwise, relating to the Opioid Matter. In the event that either party terminates this retention agreement, EPC will be entitled to enforce the lien against any net recovery ultimately obtained by the City related to the Opioid Matter, according to the following schedule:

- A lien on 10% of the net recovery vests upon execution of this agreement.
- An additional 5% vests upon the filing of the complaint.
- An additional 5% vests upon the completion of pleadings motions in this suit or in any related consolidated proceeding.
- An additional 5% percent vests upon the completion of summary judgment briefing in this suit or in any related consolidated proceeding.

If you have any questions about the terms of this retention agreement, please do not hesitate to contact me. On behalf of EPC, we look forward to working with you on this matter.

Sincerely,

EDELSON PC



Jay Edelson

**Agreed to by:**

**City of Southgate**

By (signature): \_\_\_\_\_

\_\_\_\_\_  
Mancini Schreuder Kline PC

Name (printed): \_\_\_\_\_

Its (title): \_\_\_\_\_

Dated: \_\_\_\_\_

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**MEMORANDUM**

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**To:** City of Southgate, Michigan  
**From:** Edelson PC  
**Re:** Potential Opioid Litigation  
**Date:** February 21, 2018

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Prescription opioids—such as Oxycodone (OxyContin®) and Hydrocodone (Vicodin®)—are devastating the nation. An American dies from an opioid overdose every sixteen minutes. And prescription opioid overdose deaths in America now outnumber firearm homicides. In addition to the pain caused to individuals and families affected by the epidemic, communities across the United States—including the City of Southgate—have shouldered real costs in trying to combat the crisis.

In an effort to clamp down on the epidemic, hundreds of lawsuits have been filed against opioid manufacturers and distributors seeking to hold them responsible for the costs incurred by communities nationwide. This memorandum addresses issues relating to the City of Southgate's potential recovery efforts against opioid manufacturers and/or distributors. Section I outlines the national opioid litigation landscape. Section II highlights early indicia of the strength of opioid-related claims. Section III considers the City of Southgate as a potential plaintiff in opioid litigation.

**I. THE NATIONAL OPIOID LITIGATION LANDSCAPE**

**A. Overview**

Though opioid litigation dates back more than a decade,<sup>1</sup> 2017 witnessed an inflection point. Since the beginning of last year, more than 200 cases have been filed in state and federal courts against opioid manufacturers and distributors. The first movers, who still represent the vast majority of on-file cases, have been government entities, including states, cities, and county governments.

Governments are naming manufacturers, distributors, or both as defendants. Broadly speaking, there are two categories of claims. The first—and likely strongest—type of claim alleges that opioid distributors have engaged in negligent and/or intentional conduct leading to vast amounts of diversion (*i.e.*, non-prescription sale and consumption) in the opioid supply chain. The second type of claim alleges that opioid manufacturers and distributors have engaged in fraudulent

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<sup>1</sup> See, e.g., NEW YORK TIMES: “In Guilty Plea, OxyContin Maker to Pay \$600 Million,” accessible at <http://www.nytimes.com/2007/05/10/business/11drug-web.html>.

and deceptive practices that have caused grossly excessive opioid prescription rates. For brevity, this memorandum refers to the former category as “diversion claims” and the latter as “deception claims.”

Specific causes of action vary by case and by defendant category (*i.e.*, whether manufacturer or distributor), but often include:

- Claims under state consumer protection statutes;
- Public nuisance claims;
- Negligence;
- Common law fraud;
- Civil conspiracy; and
- State-level Medicaid Program Integrity law claims.

As to the scale of the damages at issue, Figure 1 below—which is an excerpt from a recently published report on the opioid epidemic, by the Council of Economic Advisers—speaks volumes.<sup>2</sup> The cases currently on file allege an array of damages theories, from excess expenditures on healthcare, social programs (such as drug treatment), and law enforcement, to decreased revenues due to employee and citizen health problems, lost productivity, and reduced tax revenues. While not all of these things are necessarily recoverable in a lawsuit, these estimates should provide a baseline sense of the scale of “true” damages at issue in these cases.

**Table 3: Comparison of CEA Estimated Cost to Estimates from Other Studies**

Study	Study year	Opioids included	Nonfatal costs	Fatal costs	Adjustment for under-counting	Cost (2015 \$)	Ratio of CEA estimate to study estimate
Birnbaum et al. (2006)	2001	Prescription	Yes	Earnings	No	\$11.5 billion	43.8
Birnbaum et al. (2011)	2007	Prescription	Yes	Earnings	No	\$61.5 billion	8.2
Florence et al. (2016)	2013	Prescription	Yes	Earnings	No	\$79.9 billion	6.3
CEA (2017)	2015	Prescription & illicit	Yes	Value of statistical life	Yes	\$504.0 billion	1.0

(Fig. 1)

B. Coordination and/or Consolidation of Opioid Cases in State and Federal Courts

In the federal courts, a petition to consolidate 66 cases—almost all of them government cases—into an MDL was granted by the Judicial Panel on Multidistrict Litigation on December 5, 2017. The case is captioned *In re National Prescription Opiate Litigation*, MDL No. 2804, and was transferred to Judge Polster in the Northern District of Ohio. More than 100 additional cases have since been identified as potential tag-along actions.

<sup>2</sup> *The Underestimated Cost of the Opioid Crisis*, The Council of Economic Advisers, (November 2017), available at <https://www.whitehouse.gov/the-press-office/2017/11/20/cea-report-underestimated-cost-opioid-crisis>.

As to the cases proceeding in state courts, we believe many states are likely to implement the same litigation coordination procedures employed in other large-scale mass torts.

## II. EARLY INDICIA OF THE STRENGTH OF OPIOID CLAIMS

Two recent decisions denying (in part) motions to dismiss in opioid cases warrant a closer look, in order to get a preliminary sense of the direction of opioid litigation. The first is *City of Chicago v. Purdue Pharma L.P.*, 211 F. Supp. 3d 1058 (N.D. Ill. 2016). There, Chicago filed suit against four opioid manufacturers, alleging that the defendants, through a deceptive and unfair marketing campaign, systematically distorted the medical understanding of opioids and illegally inflated the rate of opioid prescriptions in Chicago. After several amendments to the pleadings, the Court allowed two of Chicago's claims to survive past the pleadings stage: (1) deceptive practices under the Illinois Consumer Fraud Act, and (2) misrepresentation under the Chicago Municipal Code.

The second noteworthy decision is *Everett v. Purdue Pharma L.P.*, No. 17-cv-209, 2017 WL 4236062, at \*6 (W.D. Wash. Sept. 25, 2017). That case, filed by the City of Everett, Washington against Purdue Pharma (the manufacturer and—as relevant here—*distributor* of OxyContin), is essentially a diversion case: Everett alleges that Purdue “knowingly, recklessly, and/or negligently supplied suspicious quantities of OxyContin to obviously suspicious physicians and pharmacies in Everett . . . for the illegal diversion of OxyContin within Everett, without disclosing suspicious orders as required by regulations.” *Id.* at 3. In its order granting in part and denying in part Purdue's motion to dismiss, the Court allowed four counts to proceed: (1) gross negligence, (2) negligence, (3) violations of the State's consumer protection act, and (4) unjust enrichment. *Id.* at 19. The Court also noted that the public nuisance claim, which was dismissed without prejudice, could be “easily” cured. *Id.*

The *City of Chicago* and *City of Everett* cases are important for a few reasons. First, they provide hard evidence that both deception cases (like *City of Chicago*) and diversion cases (like *City of Everett*) may be viable moving forward. Second, they illuminate specific allegations courts may allow to survive past the pleadings stage. Finally, they provide judicial “cover” to judges who might be (1) inclined to let an opioid case proceed to the merits, but (2) wary of the optics of being the first judge in the country to allow an opioid case to proceed.

## III. SOUTHGATE AS AN OPIOID LITIGANT

We believe that a global settlement, negotiated largely in the context of one or more MDLs, is inevitable. For that reason, we are advising many of our clients to have at least some sort of a foot in the door of any relevant MDL proceedings. But we also believe that a client that has a noteworthy case outside of the MDL will possess an inordinate amount of leverage in any global settlement because the global settlement must achieve global peace for the settling defendants. Applying these general premises to Southgate, we believe the City should pursue a multi-jurisdiction strategy. The following is an overview of such an approach.

### A. Forum, Venue, and Overall Strategy

Southgate—as master of its own complaint—is empowered to select which courts it wishes to pursue its opioid claims in. We believe the City should pursue some of its claims in state courts, while pursuing others in the federal MDL.



Ensuring federal jurisdiction is as simple as including a RICO claim in a pleading and filing in federal court.<sup>3</sup> Ensuring state court as the forum is slightly nuanced, requiring Southgate to either (1) file suit in a Michigan state court against a group of defendants including at least one Michigan-citizen defendant, or (2) file suit in the home state of each targeted defendant.

Because Michigan substantive law is not particularly favorable for opioid cases—as discussed below in Section III(B)—we believe that Southgate should (1) pursue some claims in other state courts that are likely to apply the foreign state’s substantive law, and (2) pursue the remainder of its claims in the MDL.

#### B. Drug Manufacturer and Seller Statutory Immunity in Michigan

Michigan has an aggressive statute providing significant immunity over product liability claims against FDA-approved drug product manufacturers and distributors. Specifically, under Michigan law, “[i]n a product liability action against a manufacturer or seller, a product that is a drug is not defective or unreasonably dangerous, and the manufacturer or seller is not liable, if the drug was approved for safety and efficacy by the [FDA], and the drug and its labeling were in compliance with the [FDA’s] approval at the time the drug left the control of the manufacturer or seller.” *In re Baycol Prod. Litig.*, 2008 WL 8797727, at \*7 (D. Minn. Sept. 9, 2008) (citing MCL § 600.2946(5)).

This statutory regime poses a significant hurdle for litigants in Michigan who want to sue manufacturers or sellers of FDA-approved drugs. MCL § 600.2945(h) defines “product liability action” as any “action based on a legal or equitable theory of liability brought for the death of a person or for injury to a person or damage to property caused by or resulting from the production of a product.” This definition covers not just strict products liability theories, but also negligence, breach of warranty, and even unjust enrichment theories that arise out of a death or injury via pharmaceuticals.

In *Attorney General v. Merck Sharp & Dohme Corp.*, 807 N.W.2d 343 (Mich. App. 2011), the Michigan Court of Appeals took a broad reading of the statute, holding that “product liability action” includes essentially any theory of liability challenging the safety or efficacy of an FDA-Approved drug. In that case, the Michigan Attorney General sought to recover damages under the Medicaid False Claim Act under a fraud-based theory, “[B]ecause,” the theory went, “Merck misrepresented the safety and efficacy of its prescription pain reliever Vioxx in its marketing and because Michigan reimbursed providers who prescribed or dispensed Vioxx, Michigan would not have incurred such expenses but for Merck’s fraudulent activity.” *Id.* at 344. The court articulated a three-element test to determine when a claim is barred by MCL § 600.2946(5):

- (1) the action is based on a legal or equitable theory of liability;
- (2) the action is brought for the death of a person or for an injury to a person or damage to property; and

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<sup>3</sup> For sake of completeness, Southgate likely has legitimate RICO claims against many potential opioid defendants, and those claims would confer federal question jurisdiction upon a federal court (and, most likely, supplemental jurisdiction upon related state law claims). Alternatively, Southgate could simply avoid suing any non-diverse defendants and rely upon diversity jurisdiction.

(3) that loss was caused by or resulted from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, inspection, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of a product” (under the definition of “production” in MCL § 600.2945(i)).

*Id.* at 347. Notably, even though the AG’s claim concerned deceptive marketing and “made no allegations of a death of physical injury to a person,” the court nevertheless characterized the claim as falling under “damage to property” because it sought monetary damages by challenging the safety and efficacy of an FDA-approved drug. *Id.* at 348–49.

Our review of this law, and the case law developed around it, suggest a few paths forward for Michigan entities wishing to file pharmaceutical cases.

*i. Track 1: Filing in the Defendants’ Home States*

The first track is to file one or more lawsuits in defendants’ home state courts, asserting claims under those states’ laws—and arguing that the foreign state’s substantive law should apply to the case. We address this possibility, using California as an example.

The City of Southgate could file a lawsuit in California state court by (i) naming, at minimum, McKesson Corporation, which is an opioid distributor headquartered there, and (ii) avoid alleging any federal or federally preempted claims (*e.g.*, RICO claims) that could provide a basis for federal jurisdiction. The case would have to assert claims under California law and Southgate would need to argue that California substantive law should apply to the case.

In tort actions, California has adopted a unique, three-step inquiry that balances the interests of the various states in applying their law, in order to determine which state’s law should apply. *See Hurtado v. Superior Ct.*, 11 Cal.3d 574, (1974); *Chen v. L.A. Truck Ctrs., LLC*, 7 Cal.App.5th 757, 767 (2017); *see also Wash. Mut. Bank, FA v. Superior Ct.*, 15 P.3d 1071, 1080–81 (2001). California adamantly rejects the rule of *lex loci delicti* (the “place of the injury” rule). *Bernhard v. Harrah’s Club*, 16 Cal.3d 313, 316 (1976).

The default position is that California courts apply California law “unless a party litigant timely invokes the law of a foreign state.” *Wash. Mut. Bank*, 15 P.3d at 1080. If so, the proponent of the foreign-state law must first identify the conflicting rule(s) and demonstrate that they materially differ. *Id.* Second, the court determines what interest, if any, each state has in applying its law to the case. *Id.* California courts do not hesitate to declare that a foreign state has no legitimate interest in having its law applied. *See, e.g., id.* at 1081; *Hurtado*, 11 Cal.3d at 580. Where application of its law will not significantly further the interests of the foreign state, “any conflict is a false conflict, and [California] law will prevail. *Chen*, 7 Cal.App.5th at 767. If each state does have significant interest in its law, the third step requires the court to balance those interests. *Wash. Mut. Bank*, 15 P.3d at 1081. The question is: which state’s interests would be most impaired if its law is not applied? *Id.* Overall, we believe there is a strong chance that California substantive law would apply to Southgate’s potential case against McKesson.

ii. Track 2: Advance a Different Theory of Liability

The second track is to file one or more cases in the federal MDL against certain manufacturers, distributors, pharmacies, and pill mills. These cases would be filed under Michigan law, but would advance a novel theory of liability that pleads around MCL § 600.2946(5). Specifically, Southgate would allege public nuisance claims, arguing that injuries suffered by Southgate—in the form of increased expenditures (and decreased tax revenues)—do not qualify as “injur[ies] to a person” under the statutory definition of “product liability action.” MCL § 600.2945(h). Underlying this strategy is our belief that public nuisance claims, in the opioid context, may succeed under Michigan law where run-of-the-mill pharmaceutical product liability actions would not.

iii. Track 3: Amend the Law

The last track is to attempt to amend the law to narrow the scope of the statute. The actual fix required is relatively simple: (i) change the statutory definition of “product liability action” to solely focus on strict liability, (ii) remove the phrase “or damage to property,” and (iii) make these changes apply retroactively. The challenge—of course—would be the lobbying effort likely required to make these changes occur.

C. Claims

The particular causes of action Southgate could allege will of course depend on its specific facts and damages. That said, the following five causes of action—pleaded in a *parens patriae* capacity—should likely be included:

1. Public Nuisance
  - Generally filed against distributors and pharmacies.
  - These claims generally focus on excess distribution of opioids, in particular communities, leading to decreases in public health, quality of life, and safety.
2. Negligence
  - Generally filed against distributors and pharmacies.
  - These claims typically focus on distributors and pharmacies ignoring their duties to monitor and report suspicious and excessive opioid orders and prescriptions.
3. Unjust Enrichment
  - Generally filed against all defendants.
  - These claims generally focus on restitution and disgorgement of opioid defendants’ ill-gotten gains.
4. Civil Conspiracy
  - Generally filed against all defendants.
  - Conspiracy claims against manufacturers generally focus on the decades long, coordinated campaign to deceive doctors as well as the public regarding the safety and efficacy of opioids.
  - Conspiracy claims against distributors and pharmacies generally focus on (1) pharmacies systematically and knowingly filling illegitimate prescriptions, and (2) distributors knowingly enabling pharmacies by providing ever-increasing



volumes of opioids.

5. Consumer Protection Laws

- Generally filed against manufacturers.
- Claims against all defendants for engaging in deceptive acts and practices in trade or commerce.

D. Damages

Recent estimates of the nationwide, annual societal cost of the opioid epidemic range from \$11.5 billion to over \$500 billion.<sup>4</sup> These studies generally assess the epidemic's costs by focusing on three key areas:

- financial strain on *medical services*, including government medical subsidies;
- financial strain on the *legal system*, including excess expenses for courts, corrections personnel, public defenders, and prisons; and
- lost *workplace productivity*, encompassing everything from additional rehiring costs to absenteeism.

Southgate has no doubt felt this financial impact in these areas, and many more, including both costs *imposed* on its medical system, legal system, and local private sector, as well as any *willing* costs it has undertaken in response to the opioid crisis. Without more information about the history of city expenses concurrent with the rise in opioid abuse, the actual total cost is difficult to measure—though comparisons to other locales may be drawn. For instance, Westmoreland County, Penn. recently estimated that it **incurred \$19 million in expenses in 2016 alone for opioid-related costs.**<sup>5</sup> This would include the costs such as:

- Hiring additional police and police overtime;
- Hiring additional emergency medical service personnel and overtime;
- Autopsies;
- Addiction treatment;
- Naloxone hydrochloride and other overdose antidote purchases and administration; and
- Burdens on the city's health insurance plan.

E. Prominent Defendants

The following is a list of the prominent manufacturers and distributors Southgate may consider naming as defendants in opioid litigation.

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<sup>4</sup> See WHITE HOUSE COUNCIL OF ECONOMIC ADVISORS, THE ESTIMATED COST OF THE OPIOID CRISIS Table 3 (Nov. 20, 2017), available at <http://bit.ly/2BaCND7>.

<sup>5</sup> See Rich Cholodofsky, *Westmoreland county Files Lawsuit to Recoup Money Lost to Opioid Crisis*, TRIBLIVE (Dec. 15, 2017), <http://triblive.com/local/westmoreland/13078117-74/westmoreland-county-files-lawsuit-to-recoup-money-lost-to-opioid-crisis>.

Manufacturers

- Purdue Pharma L.P.
  - Delaware Corporation with PPB in Stamford, Connecticut.
  - Engaged in manufacture, promotion, and distribution of various opioids, including OxyContin, MS Contin, and Dilaudid.
  
- Teva Pharmaceuticals (Cephalon)
  - Delaware Corporation with PPB in Frazer, Pennsylvania.
  - Engaged in manufacture, sales, and distribution of opioids including Actiq and Fentora.
  
- Janssen Pharmaceuticals, Inc. (Johnson & Johnson)
  - Pennsylvania Corporation with PPB in Titusville, New Jersey.
  - Manufactures, sells, and distributes Duragesic (fentanyl).
  
- Endo Health Solutions
  - Delaware Corporation with PPB in Malvern, Pennsylvania.
  - Develops, markets, and sells prescription drugs including: (1) Opana ER, (2) Opana, (3) Percoden, (4) Percocet.
  
- Allergan PLC
  - Public limited company with PPB in Dublin, Ireland.
  - Engages in the business of marketing and selling opioids across the country, including branded drugs Kadian and Norco, a generic version of Kadian, and generic versions of Duragesic and Opana.
  
- Mallinckrodt PLC
  - Public limited company headquartered in the United Kingdom, with U.S. Headquarters in St. Louis Missouri.
  - Mallinckrodt LLC is a limited liability company organized under the laws of Delaware.
  - Manufactures, markets, and sells opioids, including generic oxycodone.

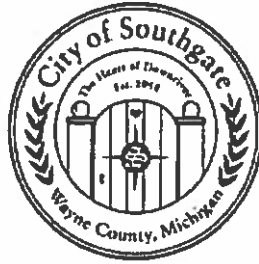
Distributors

- McKesson Corporation
  - Delaware Corporation with PPB in San Francisco, California.
  - 2016 revenues of \$190 billion.
  
- Cardinal Health Inc.
  - Ohio Corporation with PPB in Dublin, Ohio.
  - 2016 revenues of \$130 billion.
  
- AmerisourceBergen Corporation
  - Delaware corporation with PPB in Chesterbrook, Pennsylvania.
  - 2016 revenues of \$135 billion.

JOSEPH G. KUSPA  
*Mayor*

JANICE M. FERENCZ  
*City Clerk*

JAMES E. DALLOS  
*Treasurer*



**City of Southgate**  
**Celebrating 60 Years!**

- CITY COUNCIL -

JOHN GRAZIANI  
*Council President*

MARK FARRAH

KAREN E. GEORGE

BILL COLOVOS

DALE W. ZAMECKI

PHILLIP J. RAUCH

CHRISTOPHER P. ROLLET

**Memorandum**

**To:** Honorable City Council Members

**From:** Dustin Lent, City Administrator

**Date:** July 14, 2018

**Re:** First Reading of Zoning Ordinance Amendment to rezone property located at 14005 Allen Rd. (Southeast corner of Allen and Superior Road) from R-1B (Single Family Residence) to C-1 (Community Business)

---

The Planning Commission recommends to City Council an amendment to the City of Southgate Zoning Map at its July 9<sup>th</sup> meeting the following:

The applicant (Superior Allen LLC) is requesting to rezone approximately one (1) acre located at the southeast corner of Allen and Superior Road to construct a single story 3,000 sq. ft. building for retail on the property. The site is currently vacant and level and all infrastructure is available once development commences.

In your packets is a copy of the Affidavit of Publication in the News-Herald Newspaper, a copy of the Planning Commission minutes, a copy of the City Planner's Memo to the Planning Commission, and the subsequent action by the Commission to recommend the amendment to the City Council.

I look forward to addressing Council's questions and comments. Your favorable consideration would be greatly appreciated.

Dustin Lent, City Administration

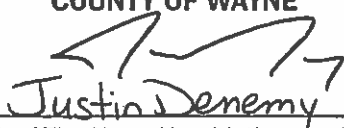
## AFFIDAVIT OF PUBLICATION

2125 Butterfield Dr, Suite 102N • Troy MI 48084

City of Southgate  
14400 DIX TOLEDO RD

SOUTHGATE, MI 48195-2598  
Attention: MICHELLE GENDRON

STATE OF MICHIGAN,  
COUNTY OF WAYNE

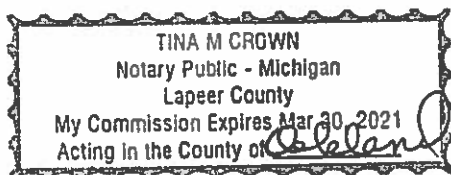


The undersigned Justin Denemy, being duly sworn the he/she is the principal clerk of The News-Herald, thenewsherald.com, thenewsherald.com2, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

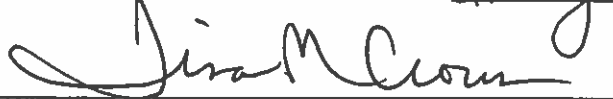
### City of Southgate

#### Published in the following edition(s):

The News-Herald	06/24/18
thenewsherald.com	06/24/18
thenewsherald.com2	06/24/18



Sworn to the subscribed before me this 29<sup>th</sup> June 2018.



Notary Public, State of Michigan  
Acting in Oakland County

#### Advertisement Information

Client Id: 640703

Ad Id: 1609994

PO:

Sales Person: 200301

### CITY OF SOUTHGATE NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that there will be a Public Hearing conducted by the Southgate Planning Commission on **Monday, July 9, 2018 at 7:30 P.M.** in the Municipal Council Chambers, 14400 Dix Toledo Highway, Southgate, Michigan.

The Purpose of said hearing shall be to consider:

1. **Redwood USA, LLC request for Conditional Use/Site Plan Approval to construct apartment style condo at 11601 Allen Rd.**
2. **Rezoning of property at 14005 Allen Rd. from R-1B (Single-family Residence) to C-1 (Community Business) as requested by Superior Allen, LLC.**
3. **Conditional rezoning of property at 13333 Eureka from C-2 (General Business) to M-1(Light Industrial). Site plan approval for establishing a storage facility located at 13333 Eureka.**

A copy of the proposed plan is available for public inspection in the Building Department at City Hall during regular business hours.

You may appear at the above-designated hearing to voice your objections or support. Any written comments should be filed in the Building Department twenty-four hours prior to the time set for said hearing.

The City of Southgate will provide auxiliary aids and services to individuals with disabilities at the meeting upon advanced notice to the City of Southgate by writing or calling The Building Department, 14400 Dix-Toledo Highway, Southgate, Michigan, 48195, and (734) 258-3027.

**Janice Ferencz, City Clerk  
Southgate, Michigan**

Published June 24, 2018

**City of Southgate**  
***Planning Commission Meeting***  
July 9, 2018

This meeting of the Planning Commission was held in the Municipal Council Chambers, 14400 Dix-Toledo Highway, Southgate, Michigan on Monday, July 9, 2018 and called to order by Chairman Joseph Charney, at 7:30 p.m.

PRESENT: Anna Renaud, Barbara Biskner, Patricia Anderson, Jay Cashmer, Joseph Charney, Ed Gawlick, Chad Godbout, Robin Craig

ABSENT: Marie Henegar (excused)

ALSO PRESENT: Plan Consultant John Enos, Building Inspections Director Bob Casanova, City Engineer, Mark Gaworecki

**Agenda:**

**Moved by Gawlik, supported by Anderson, to accept the Agenda as submitted. MOTION APPROVED UNANIMOUSLY.**

**Minutes:**

The first order of business is approval of the minutes from the May 14, 2018 Planning Commission meeting.

**Moved by Anderson, supported by Cashmer, that the minutes of the Planning Commission Meeting dated May 14, 2018 be approved. MOTION APPROVED UNANIMOUSLY.**

**Persons and/or Petitioners:**

1. Redwood USA, LLC request for Conditional Use/Site Plan Approval to construct condo style apartments at 11601 Allen Rd. (PC008-2018)
2. Superior Allen, LLC request for Rezoning of Property at 14005 Allen Rd. from R-1B (Single Family Residence) to C-1 (Community Business). (PC007-2018)
3. Dealpoint Merrill, LLC request for Conditional rezoning request of property at 13333 Eureka from C-2 (General Business) to M-1 (Light Industrial). Site Plan approval for establishing a storage facility. (PC009-2018)

**Public Hearings:**

1. Redwood USA, LLC request for Conditional Use/Site Plan Approval to construct condo style apartments at 11601 Allen Rd. (PC008-2018)

**Moved by Anderson, supported by Cashmer, to open the Public Hearing for Conditional Use/Site Plan Approval to construct condo style apartments at 11601 Allen Rd. MOTION APPROVED UNANIMOUSLY.**

The applicant (Redwood LLC) recently received approval to rezone an approximately twenty-five (25) acre parcel located at the northeast corner of Allen and Brest Road to build a single story apartment neighborhood consisting of approximately one hundred and seventy three (173) units within thirty-three (33) buildings. Based on similar projects this national company has developed, the units have two car garages and are well designed for empty nesters, single people and seniors. In addition, sidewalks, significant landscaping, quality architecture and a dog park make for an excellent development. Apartments are a principal permitted use in the RM District. The site is vacant and level and all infrastructure is available once development commences.

We recommend approval of the site plan conditional use. This is an excellent project.

The applicant stated they are very excited about this project and it was a pleasure working with all City officials.

A resident was interested in the cost per month on these apartments.

**Moved by Cashmer, supported by Gawlik, to close this Public Hearing. MOTION APPROVED UNANIMOUSLY.**

**Moved by Renaud, supported by Cashmer, to approve a Special Conditional Use/Site Plan Approval for Redwood USA, LLC, 7510 E. Pleasant Valley Road, Independence, Ohio 44131, to construct condo style apartments at 11601 Allen Road. (PC008-2018) MOTION APPROVED UNANIMOUSLY.**

2. Superior Allen, LLC request for Rezoning of Property at 14005 Allen Rd. from R-1B (Single Family Residence) to C-1 (Community Business). (PC007-2018)

**Moved by Anderson, supported by Gawlik, to open the Public Hearing for Rezoning of property at 14005 Allen Rd. from R-1B (Single Family Residence) to C-1 (Community Business). MOTION APPROVED UNANIMOUSLY.**

The applicant is requesting a rezoning of the property from R-1B: One Family Residential to C-1: Community Business. The subject site consists of three vacant parcels, totaling 1 acre, at the southeast corner of Allen Road and Superior Street. The subject site is located 1/8 mile south of I-75 and 1/2 mile north of Eureka Road. *The applicant has proposed as a condition that they will construct an approximately 3,000 sq. ft. building for retail, office or restaurant uses including a drive-thru on the subject property.* A conceptual site plan has been included with the rezoning application but will require a formal submittal to the planning commission for review.

We recommend approval of the rezoning from R-1B to C-1. The findings regarding the proposed rezoning are summarized as follows:

1. The land uses surrounding the subject property are all residential, with the exception of the commercial property at the northeast corner of Allen Rd. and Superior St. Most property adjacent Allen Rd. and north of Superior St. are used for commercial purposes, while the majority of the property south of Superior St. are used for Residential purposes.
2. The proposed rezoning is not in conformance with the Future Land Use Plan. However, the proposed rezoning is a compatible buffer between intense commercial uses and residential dwellings and is consistent with the goals and objectives set forth in the Master Plan.
3. The adequacy of existing public facilities for future uses will be evaluated by the City Engineer.

The applicant stated they would like to rezone the property from R-1B to C-1 and construct a masonry building with a drive thru.

A resident living on Flanders was present and opposed to this request with concerns that this development will cause more congestion and noise concerns. There are several vacant spaces in the city where this project could be located.

**Moved by Anderson, supported by Gawlik, to close this Public Hearing. MOTION APPROVED UNANIMOUSLY.**

**Moved by Renaud, supported by Cashmer, to recommend City Council approve a Rezoning of property at 14005 Allen Rd. by Superior Allen, LLC, from R-1B (Single Family Residence) to C-1 (Community Business). (PC007-2018) MOTION APPROVED UNANIMOUSLY.**

3. Dealpoint Merrill, LLC request for Conditional rezoning request of property at 13333 Eureka from C-2 (General Business) to M-1 (Light Industrial). Site Plan approval for establishing a storage facility. (PC009-2018)

**Moved by Cashmer, supported by Anderson, to open the Public Hearing for Rezoning of property at 13333 Eureka from C-2 (General Business) to M-1 (Light Industrial). Site Plan approval for establishing a storage facility. MOTION APPROVED UNANIMOUSLY.**

The applicant is requesting a conditional rezoning of the property located at 13333 Eureka Road to M-1, Light Industrial Research in order to convert the existing facility (previously a Kroger) into a climate controlled self-storage facility within the existing building. Additionally, the vacant parcel to the west of the existing facility will be used for the construction of mini-storage units as well as additional parking. The Dunham's Sporting Goods at the east end of the subject site will remain attached.

The applicant stated CubeSmart (NYSE: CUBE) is a self-administered and self-managed real estate company focused on the ownership, operation, acquisition and development of self-storage facilities in the United States. Their self-storage facilities are designed to offer affordable, easily accessible storage space for residential and commercial customers. The use proposed will be inside climate

controlled units within the former Kroger store and outside storage units surrounded by a decorative masonry wall. In addition, office and mailing services will be offered within the building.

They have been working on this project for a year with City Officials and are very excited to bring this to the City.

A resident was present with concerns regarding additional traffic and too close to residential.

**Moved by Anderson, supported by Gawlik, to close this Public Hearing. MOTION APPROVED UNANIMOUSLY.**

**Moved by Anderson, supported by Cashmer, to recommend City Council approve a Rezoning of property at 13333 Eureka by Dealpoint Merrill, LLC, from C-2 (General Business) to M-1 (Light Industrial). Site Plan approval for establishing a storage facility. (PC009-2018) MOTION APPROVED UNANIMOUSLY.**

**Officials' Reports:** None

**Correspondence:** None

**Old Business:** None

**New Business:**

Carlisle Wortman Associates, Inc. Revised Contract.

**Moved by Anderson, supported by Cashmer, that the Planning Commission recommends to City Council to amend Carlisle Wortman Associates yearly contract to increase the monthly retainer to \$1,200, inclusive of all additional hours. MOTION APPROVED UNANIMOUSLY.**

**Adjournment:**

**Moved by Cashmer, supported by Gawlik, that this meeting of the Planning Commission be adjourned at 8:27 p.m. MOTION APPROVED UNANIMOUSLY.**

---

Joseph Charney  
Chairman, Planning Commission  
as





**Carlisle | Wortman**  
ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

**REZONING ANALYSIS**  
**City of Southgate**

<b>Applicant/Owner</b>	Joe Disanto/Joe Pizzo
<b>Property Address:</b>	Vacant PID #: 53015020043000, 53015020042000, 53015020041000
<b>Current Zoning:</b>	R-1B One Family Residential
<b>Action Requested:</b>	Rezoning of the subject property to C-1 Community Business District
<b>Required Information:</b>	The required information for a rezoning request has been provided.

**DESCRIPTION**

The applicant is requesting a rezoning of the property from R-1B: One Family Residential to C-1: Community Business. The subject site consists of three vacant parcels, totaling 1 acre, at the southeast corner of Allen Road and Superior Street. The subject site is located 1/8 mile south of I-75 and 1/2 mile north of Eureka Road. The applicant proposes to construct a 3,000 sq. ft. building for retail on the subject property. A site plan has been included with rezoning application but will require a formal submittal to the planning commission for review.

**Figure 1. Photograph of Subject Site as of 2018**



**Figure 2. Aerial Photograph of Subject Site**



**NEIGHBORING ZONING, LAND USE AND MASTER PLAN**

Adjacent zoning, land uses and master plan designations are summarized in the chart on the following page:

Adjacent Properties			
	Existing Use	Zoning	Master Plan
Site	Vacant	R-1B One Family Residential	Single-Family Detached
North	Superior Street./ Gas Station	C-3 Thorofare Service (Allen Rd.)/ R-1B One Family Residential (Superior St.)	General Commercial
West	Allen Rd./ Condominiums	Multi-Family (Taylor)	Multi-Family (Taylor)
South	Single Family Detached	R-1B One Family Residential	Single Family Detached
East	Single Family Detached	R-1 One Family Residential	Single Family Detached

The Master Plan designates the subject property, as well as bordering properties to the east and south, as single family residential. However, the majority of properties north of Superior Street. and adjacent to Allen Rd. are designated as commercial or mixed use/commercial.

*Summary of Findings: The proposed rezoning from R-1B to C-1 is not in conformance with the City of Southgate Master Plan future land use. However, the rezoning is consistent with the goals and objectives set forth for encouraging commercial development on main road corridors.*

#### **ANALYSIS OF EXISTING ZONING**

The intent of the C-1, Community business district is to provide a district of land use transition between major thoroughfares or other intense nonresidential uses and single-family residences. The C-1 district serves uses that are compatible with residential neighborhoods. The Planning Commission should consider all potential permitted uses in C-1 districts when considering this request.

*Summary of Findings: C-1 zoning would be compatible with the surrounding residential properties, as it would provide a transition to the C-3 and C-2 properties adjacent to Allen Road, north of the subject property.*

#### **NATURAL RESOURCES**

The subject parcel has been mostly cleared of any vegetation. Existing trees on the site may be able to be worked into the design of a future site.

*Summary of Findings: None.*

#### **TRAFFIC IMPACT AND SITE ACCESS**

There are currently no access points to the subject property. The included plans propose access points at both Superior Street and Allen Road. This will be addressed at site plan review, if developed in the future.

*Summary of Findings: None.*

#### **ESSENTIAL FACILITIES AND SERVICES**

The sufficiency of the existing public services available to the parcel will be evaluated by the City Engineer during site plan review.

*Summary of Findings: The adequacy of existing public facilities for future uses will be evaluated by the City Engineer.*

#### **SUMMARY OF FINDINGS**

We recommend approval of the rezoning from R-1B to C-1. The findings regarding the proposed rezoning are summarized as follows:

1. The land uses surrounding the subject property are all residential, with the exception of the commercial property at the northeast corner of Allen Rd. and Superior St. Most property adjacent Allen Rd. and north of Superior St. are used for commercial purposes, while the majority of the property south of Superior St. are used for Residential purposes.
2. The proposed rezoning is not in conformance with the Future Land Use Plan. However, the proposed rezoning is a compatible buffer between intense commercial uses and residential dwellings and is consistent with the goals and objectives set forth in the Master Plan.
3. The adequacy of existing public facilities for future uses will be evaluated by the City Engineer.

We look forward to discussing this with you at the next available Planning Commission meeting.

# CITY OF SOUTHGATE

## PLANNING COMMISSION RESOLUTION

At a meeting of the Southgate Planning Commission called to order by Joseph Charney on July 9, 2018 at 7:30 p.m. the following resolution was offered:

**Moved by Renaud, supported by Cashmer, to recommend City Council approve a Rezoning of property at 14005 Allen Rd. by Superior Allen, LLC, from R-1B (Single Family Residence) to C-1 (Community Business). (PC007-2018) MOTION APPROVED UNANIMOUSLY.**

I, Joseph Charney, Chairman of the Southgate Planning Commission, do hereby certify that the foregoing is a true, correct, and complete copy of a resolution adopted by the Southgate Planning Commission at a meeting held on July 9, 2018.

  
Chairman

cc: Plan Consultant, City Administrator, Building Department, City Council, Clerk, File, Attorneys