

**MEMORANDUM FOR RECORD OF APPEAL TO CITY COUNCIL OF
PLANNING COMMISSION DENIAL OF SITE PLAN APPLICATION BY ALATUS
FOR LEXINGTON APARTMENTS.**

2/6/21 By: Frogtown Neighborhood Association and Housing Justice Center

The City Council needs to be aware of two critical points regarding the Alatus appeal:

First, as the attached emails and the Alatus testimony at the Zoning Committee hearing indicate, Alatus is not proposing to use tax savings from the St. Paul 4(d) program to provide more affordable rents. Rather, the 4(d) tax savings will simply enhance the bottom line of the project's cash flow. At the January 14, 2021 Zoning Committee hearing, Chris Osmundson, project director for Alatus, indicated that 155 units would be affordable at 60% of AMI. There was no discussion of unit sizes or actual rents. There was no mention of the use of or need for 4(d) and the Alatus representation regarding affordability therefore did not depend in any way on use of 4(d). Two weeks later, Osmundson sent the emails attached as Exhibit 1 to City staff, for the first time seeking to "the ability of us to enroll" in the City's 4(d) program and "curious" about its potential availability for the project. It is quite clear that Osmundson's representation regarding 155 units at 60% of AMI did not in any way depend on 4(d).

Further, Alatus has indicated an intent to falsely indicate to the City Council an agreement by Wilder to provide a land write-down in order to facilitate deeper affordability. Attached as exhibit 2 is an email received from Osmundson on 4/1/21. It states that Wilder has agreed to write down the purchase price of the site to permit 20 of the 4(d) units to be available at 50% of AMI and that will be presented to the City Council prior to the 4/7/21 Council meeting. However, attached as Exhibit 3 is an April 3 email from Wilder's director indicating that no such agreement has been reached with Alatus. An April 5 call from Wilder staff further indicated that Wilder has only had a very preliminary discussion of potential alternatives with Alatus.

In response to the 4/1 Alatus email, we responded suggesting the use of 4(d) to provide additional affordability beyond 60% of AMI. Osmundson's reply, attached as Exhibit 4, however makes it clear that Alatus has no intention of using the 4(d) tax savings to provide additional affordability beyond what he had already represented to the Planning Commission. He further makes clear that the enhancement Alatus proposes, providing 20 units affordable at 50% of AMI comes solely from the purported agreement by Wilder to reduce the purchase price. So Alatus is proposing to: divert (so far hypothetical) Wilder resources to accomplish rent reductions that Alatus could achieve with about one third of the 4(d) tax savings; using community concerns about affordability to convince the City to provide 4(d) to do what Alatus promised the Planning Commission to do before they were even aware of 4(d); and then to pocket all of the scarce City 4(d) resources provided by the City.

It should be clear from the above that the City Council should not take seriously any pronouncement by Alatus of its affordability intentions. The City should reject the Alatus appeal and tell them to submit another site plan application only when they are ready to make firm, binding, written commitments to an acceptable level of affordability. Any approval of the Alatus project should require at least the 10 year guarantee they have proposed of 144 units meeting the minimal 4(d) standard with 20 1-BR and 2-BR apartments at 50% of AMI, all without any 4(d) from the City. Further, approval should be conditioned on Alatus applying for and accepting 4(d) and applying all of it to a further subset of the 4(d) units to provide even lower rents, down to 30% of AMI. This can be done because Alatus does not need 4(d) to

achieve 60% of AMI, necessary for 4(d) eligibility, on half its units. Thus all of the 4(d) tax savings can be applied to a sub-set of the 4(d) apartments reducing their rents well below 60% AMI, with the remainder of the 4(d) units at 60%

Second, the purported Planning Commission finding which Alatus is appealing violates state law. Because the City is proceeding in violation of state law, there is a danger that whatever action it takes will be found arbitrary and capricious in any subsequent litigation. The purported finding states that “the site plan is generally consistent with the applicable policies of the 2040 Saint Paul Comprehensive Plan.” The Planning Commission never made such a finding and the Commission discussion indicates the opposite. Even some of the members voting to approve the site plan expressed concern that it was not consistent with the Comprehensive Plan. What the Planning Commission actually found was this, as can easily be determined from the meeting minutes and the meeting video:

MOTION: Commissioner Perryman moved under the authority of the City’s Legislative Code, based on findings 1 and 2, that the application of Alatus Development LLC for a site plan for a 6-story, mixed-use building at 411 and 417 Lexington Pkwy N is DENIED. The motion carried 8-7 (Baker, Edgerton, Grill, Hood, Lindeke, Risberg, Underwood with 2 abstentions (Reilly, Yang) on a roll call vote.

That is the entire extent of the Planning Commission findings in denying the Alatus site plan application. There has been no other Commission action.

The representation by City staff to Alatus and to the Council as to the Planning Commission resolution which is being appealed violates state law in two important ways. Minn. Stat. 15.99 Subd. 2(c) permits a subsequent addition of written reasons for a denial; but imposes two requirements, neither of which was complied with here. First, the written reasons for the denial must have been adopted by the Commission at the next meeting following the denial. The Planning Commission was never presented with, and therefore never adopted, the staff’s re-write of the Commission’s denial resolution. Second, the written statement must be consistent with the reasons stated for the denial. They are not. No Commissioner supporting the motion to deny ever expressed a belief that the project was generally consistent with the Comprehensive Plan.

The City Council must fix the record on appeal prior to making any decisions on the appeal.

Absent a commitment for additional affordability as set out above, the City Council should deny the site plan application on the following grounds:

The St. Paul Zoning Code, § 61.402(c)(1) requires a finding of consistency with the City’s Comprehensive Plan and plans for sub-areas of the city. The Minnesota Supreme Court has determined that inconsistency with a comprehensive plan constitutes permissible grounds for rejection of a land use application. *See, Barton Contracting Co. v. City of Afton*, N.W.2d 712,717 Minn. 1978) and *Hubbard Broadcasting Co. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982).

For a number of reasons, the Alatus site plan proposal for Lexington Apartments is inconsistent with the Comprehensive Plan and sub-area plans:

The City's 2040 Comprehensive Plan provides that the Plan must be construed in light of the City's Core Values, the Community's Priorities, and the City's Current Focus Areas.. All of these prominently feature: "Equity and Opportunity" (Core Values); "Equity and Sustainability" ((Community Priorities); and "Equitable Cities" creating opportunities for all residents and reducing disparities (Focus Areas).

Key goals supporting equity include: Land Use chapter: 3. Equitably-distributed community amenities, access to employment and housing choice; While another goal is simply growth around transit, this goal does not, by itself, advance equity. Transportation Chapter: 3. A transportation system that supports access to employment and economic opportunity; Housing Chapter: 3. Fair and equitable access to housing for all city residents; and 6. improved access to affordable housing.

The first paragraph in the introduction to the transit-oriented development study quoted at length in The Land Use Chapter of the Comprehensive Plan says: "A primary approach to eTOD [equitable transit oriented development] is the preservation and creation of dedicated affordable housing, which can ensure that high-opportunity neighborhoods are open to people from all walks of life."

Housing Policy H-37 is to "encourage the development of affordable housing in areas well served by transit." .

The Union Park Community Plan, Policy H1.2 is: "Support efforts to develop a wide range of housing affordability levels, promoting more affordable housing along major transit routes including...the Green Line Light Rail Line."

This project is inconsistent with all of the above goals and policies. The existence of one transit goal to foster growth around transit by itself does not offset all of the above inconsistencies, especially in light of the overarching requirement of advancement of equity.

Apartments adjacent to a transit stop priced above 50% of AMI do not advance equity and are not consistent with key Comprehensive Plan goals and policies. They serve only a very small portion of renter households in need. The most recent HUD CHAS (Comprehensive Housing Affordability Strategy) data show that 99% of the 13,845 St. Paul renter households currently paying more than half their income for rent have incomes less than 50% of AMI and the vast majority of these have far lower incomes. Restricting occupancy at the Lexington Apartments to units priced at 60% of AMI and higher is inconsistent with the Comprehensive Plans emphasis on advancing City equity as it has a disparately adverse impact on households of color. The HUD CHAS data indicate that households of color with incomes at or below 50% of AMI, incomes excluding them from Lexington Apartments, are three times as likely as white, non-Hispanic households to have severe housing problems.

The actual Planning Commission resolution also found that the site plan was inconsistent with applicable ordinances of the City. The Commission was referring to §§ 66.343(b)(2) and (b)(16). The first requires careful management of transitions to surrounding lower density managed through careful attention to building height, scale, and massing. Such transition to the adjacent properties is absent in this case, with no attempt to step down height or otherwise accommodate adjacent lower density uses, particularly the single family to the direct south of the site. The second requires preservation and extension of existing streets and alleys as part of any new development. The development as designed precludes the restoration of Fuller Avenue east/west connections.

The Alatus response to the first requirement is that the surrounding uses (which under the ordinance must be “unique to the property”) make compliance impractical. But the whole point of a requirement for transitions applies only when a new use is not otherwise compatible with an existing use. There is nothing unique to the property related to the surrounding uses. Rather Alatus simply does not want to comply and its appeal response is to simply wish the requirement away.

As to the second requirement, Alatus ignores that the restoration of street connections is a requirement, “whenever possible,” not an option. The Alatus appeal only mentions Lexington Avenue and does not even mention, let alone address, the Commission’s issue with connecting Fuller Avenue.

Exhibit 1

From: [Zorn, Sarah \(CI-StPaul\)](#)
To: [Chris Osmundson](#)
Subject: Re: Alatus - Lexington Site - 4(d) Affordable Housing Incentive Program
Date: Wednesday, January 27, 2021 11:18:59 AM
Attachments: [image001.png](#)
[image002.png](#)

Yes, that works.

From: Chris Osmundson <cbosmundson@alatusllc.com>
Date: Wednesday, January 27, 2021 at 11:18 AM
To: Sarah Zorn <sarah.zorn@ci.stpaul.mn.us>
Subject: RE: Alatus - Lexington Site - 4(d) Affordable Housing Incentive Program

Think Before You Click: This email originated **outside** our organization.

Can I call you in 15 mins – around 11:30am?

Chris

Chris Osmundson

Alatus, LLC – Director of Development
(O): 612.455.0712 | (C): 612.201.8487
cbosmundson@alatusllc.com

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From: Zorn, Sarah (CI-StPaul) <sarah.zorn@ci.stpaul.mn.us>
Sent: Wednesday, January 27, 2021 8:40 AM
To: Chris Osmundson <cbosmundson@alatusllc.com>
Subject: Re: Alatus - Lexington Site - 4(d) Affordable Housing Incentive Program

Hi Chris,

Nice to hear from you!

I'm certainly not a 4(d) expert, but I'd be happy to talk about it to the extent that I am able. The only thing on my schedule today is a meeting from 1 – 2, so just let me know what works for you.

Sarah

From: Chris Osmundson <cbosmundson@alatusllc.com>

Date: Tuesday, January 26, 2021 at 10:29 PM

To: Sarah Zorn <sarah.zorn@ci.stpaul.mn.us>

Subject: Alatus - Lexington Site - 4(d) Affordable Housing Incentive Program

Think Before You Click: This email originated **outside** our organization.

Hi Sarah,

Hope you are doing well in 2021 – I think it's slightly better than 2020...maybe?

I would like to understand the ability of us to enroll our proposed development in the 4(d) program – I noticed the application is currently closed but I'm curious about the viability of being ultimately approved if a project is meeting all the required thresholds.

Could we chat about it tomorrow?

Thank you,

Chris

Chris Osmundson

Alatus, LLC – Director of Development

(O): 612.455.0712 | (C): 612.201.8487

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Exhibit 2
Jack Cann

From: Chris Osmundson <cbosmundson@alatusllc.com>
Sent: Thursday, April 01, 2021 3:49 PM
To: Caty Royce; Jack Cann
Cc: Chris Osmundson
Subject: Alatus Housing Project - Lexington Station Project

Importance: High

Hi Caty and Jack,

This is Chris Osmundson with Alatus. Amy Huerta had mentioned you would like to speak on the Lexington Station Project. I'm available to speak pretty much anytime tomorrow. Should I plan on having counsel involved since Frogtown Neighborhood Association is represented by Housing Justice Center?

For an update, Amherst H. Wilder Foundation has graciously agreed to reduce the purchase price of the land to allow for additional affordability – the following will be the proposed affordable unit mix that will be presented to the Council prior to the hearing on April 7th:

- Studio & Alcove – 124 units @ 60% AMI less utility allowance
- 1 BDR / 1 BA – 10 units @ 50% AMI less utility allowance
- 2 BDR / 2 BA – 10 units @ 50% AMI less utility allowance

144 units in total will be affordable or 50% of all units

We have committed to obligating the project to the 4(d) Affordable Housing Incentive Program via a building permit or certificate of occupancy approval by the City pending the logistics of the 4(d) application process – which is not currently open (there is a land-use restrictive covenant document that will need to be filed on title in addition to two annual reporting documents filed and certified by the City). In return, the project will receive an approximately 40% tax reduction on the affordable units due to a class-rate reduction (1.25 to 0.75) on those affordable units and a commitment to that affordability for ten years or greater at the owner's election.

Let me know if there are further questions and if you would still like to discuss. Please let me know on the first question above, as well, if so.

Thank you,

Chris

Chris Osmundson

Alatus, LLC – Director of Development
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IDS Center, 80 S 8th Street, Suite 4155
Minneapolis, MN 55402

Exhibit 3
Jack Cann

From: Armando Camacho <armando.camacho@wilder.org>
Sent: Saturday, April 03, 2021 3:32 PM
To: Katy Royce; Amy Huerta
Cc: Tia Williams; Danielle Swift; Jack Cann; montgomeryrob@comcast.net
Subject: RE: Alatus Housing Project - Lexington Station Project

Hi Katy & all,

Amy was on PTO on Friday for the Easter Holiday and I am sure she'll respond on Monday when she is back into the office. Amy has been engaged with Alatus and will share the conversations she, on behalf of Wilder, has had with Chris, including clarity on his below points, which are not accurate.

In short, no, we have not lowered the sale price of the land nor have we renegotiated a new agreement. Both taking a lower price and renegotiating a new agreement would require board approval and we have not sought that nor even approached the topic with my board chair. That being said, I know we have tried to explore options, from our end, to try to create more affordable units. Again, Amy will share details.

We did have a board meeting shortly after we met with you at Wilder. During that meeting I gave an update on where things were at with the city's process. I believe I have enough support to disengage in selling of the land with Alatus if the city does not approve of the sale and our contract with them runs out in May. Alatus is aware of our intent. If that was to happen, Wilder would start over in the process of selling the land but, under my and Amy's leadership, we would want to have a different process that involves stakeholders in the community. All of this would take board support, but I believe I could get it if it gets to that point.

More details to come Monday but I hope this helps clarify things for now. Wishing you and all a Happy Easter Holiday, for those of you who celebrate it.

Take care,

Armando

Armando Camacho

President and CEO
651-280-2450 (Direct) | 612-281-8702 (Cell)
armando.camacho@wilder.org

Amherst H. Wilder Foundation

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Here for good®

From: Katy Royce <katy@frogtownmn.org>
Sent: Saturday, April 3, 2021 9:00 AM
To: Amy Huerta <amy.huerta@wilder.org>; Armando Camacho <armando.camacho@wilder.org>
Cc: Tia Williams <tia@frogtownmn.org>; Danielle Swift <dswift226@gmail.com>; Jack Cann <jcann@hjcmmn.org>; montgomeryrob@comcast.net <debmontgomery@comcast.net>
Subject: Re: Alatus Housing Project - Lexington Station Project

From: Chris Osmundson <cbosmundson@alatusllc.com>
Sent: Thursday, April 01, 2021 10:00 PM
To: Jack Cann
Cc: Margaret Kaplan; Caty Royce; tia@frogtownmn.org; Chris Osmundson
Subject: RE: Alatus Housing Project - Lexington Station Project

Mr. Cann,

With respect to your statement, "First, it's not at all clear that the 4d assistance from the City is entirely [sp] being used to produce more affordability than that proposed in your presentation to the zoning committee." None of that information is material or germane to the 4(d) application per the City or as defined in the State statute. The program eligibility guidelines are linked here: https://www.stpaul.gov/sites/default/files/2020-12/4d-Program-Guidelines-122220_0.pdf. It is inherent in the program that your topline revenue is being restricted in a good faith effort to maintain housing affordability for a ten year period with minimal rent increases to provide housing stability, as per the City ordinance adopted in the winter of 2019. The consideration for this is the reduced class rate on the affordable units. We are not seeking any actual grant dollars or proceeds. The purchase price reduction has been translated directly into additional affordability as represented in the additional 50% AMI affordability units in the 1 and 2 BDR unit types versus the previous proposal in which all units were 60% AMI rental units in efficiencies.

With respect to deeply affordable units, I understand the request but we are not willing to introduce these units into the project for three reasons: (1) the project needs to maintain at least 144 units at affordable 60% AMI levels to qualify for 4(d) and we cannot swap on a 1-for-1 basis 60% or 50% units for 30% units; (2) because of and due to that, we can provide substantially more affordability to more individuals and/or households under the current proposal; and (3) when paired with the Amherst H. Wilder's housing placement services, the S.A.F.E Housing Tenant Protections that have been enacted as of March 1, 2021, and the enhanced affordability throughout the property such that section 8 housing vouchers will be able to be used by holders, the proposed development can achieve even deeper levels of housing affordability than that represented at face value.

Relating to the 4% LIHTC and bonding, we will not be pursuing tax-exempt bonds / LIHTC further. As you most likely know via FOIA, we have previously requested bonding from the City in order to go down this path and it was not fruitful due to limited resources. Bonding capacity at the City and State is severely restricted and becoming more so with the 4% rate-floor enacted via the last COVID19 legislative package. There is also no reason to assume that we would create substantially more affordability than that which your client has protested to this point. While income averaging across LIHTC developments from 30% to 80% AMI rental units has been approved at a federal level, investors have yet to accept this due to the very high risk of tax credit recapture. Lastly, this effort would extend the timeline of the development by at least 12 months, there is no guarantee that it would be persuasive to your client, and it substantially elevates the review process from the current Site Plan Review procedures.

I can speak to all of these things further if you would like to discuss more but many of our efforts for full transparency thus far have essentially been used to protest the project regardless. This is an un-subsidized housing project offering a substantial level of affordability and allowing the City to use future resources to procure even more affordability elsewhere – I do not know of another project in the state that has proposed this for a new construction housing project.

Thank you,

Chris

Chris Osmundson

Alatus, LLC – Director of Development

(O): 612.455.0712 | (C): 612.201.8487

cbosmundson@alatusllc.com

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From: Jack Cann <jcann@hjcmmn.org>

Sent: Thursday, April 1, 2021 5:05 PM

To: Chris Osmundson <cbosmundson@alatusllc.com>; Caty Royce <caty@frogtownmn.org>; tia@frogtownmn.org

Cc: Margaret Kaplan <mkaplan@hjcmmn.org>

Subject: RE: Alatus Housing Project - Lexington Station Project

Mr. Osmundson, while we acknowledge some improvement in affordability represented by your email, serious issues remain. First, it's not at all clear that the 4d assistance from the City is entirely being used to produce more affordability than that proposed in your presentation to the zoning committee. It appears that at that time you were proposing 155 units at 60% of AMI, without 4d, as it was only weeks later that you communicated to city staff requesting information about 4d. So without more information, which we have requested through Wilder, we can't tell the extent to which the addition of 4d assistance is being used to reduce rents from what you proposed at the zoning committee hearing. We need to see the proposed rent structure you had in mind at the zoning committee for the 60% of AMI units; the projected real estate tax for the entire project without 4d; and the projected use of 4d. We also need to see the price reduction and how you have translated that into additional affordability.

Second, both community groups and City Council members have expressed a desire for even more deeply affordable units on the site. We'd like the discussion to include a potential trade off of fewer units at 50% of AMI and some at deeper affordability, including 30% of AMI.

A discussion tomorrow would certainly be useful, but we'd like to see the information requested above in advance. We are all free any time tomorrow. While I expect the meeting to be about the numbers, feel free to have your attorney involved in the discussion.

Please include Tia in your response.

Jack Cann

Attorney

Housing Justice Center

651-645-7378

jcann@hjcmmn.org

From: Chris Osmundson [<mailto:cbosmundson@alatusllc.com>]

Sent: Thursday, April 01, 2021 3:49 PM

To: Caty Royce; Jack Cann

Cc: Chris Osmundson

Subject: Alatus Housing Project - Lexington Station Project

Importance: High