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**APPLICATION FOR APPEAL**

Department of Planning and Economic Development  
Zoning Section  
1400 City Hall Annex  
25 West Fourth Street  
Saint Paul, MN 55102-1634  
(651) 266-6589

Zoning Office Use Only  
File #: 15.032789  
Fee: 440  
Tentative Hearing Date: To Be Scheduled

**APPELLANT**

Name Jack Kirr  
Address 2078 Highland Parkway  
City St. Paul St. MN Zip 55116 Daytime Phone 612-412-7011

**PROPERTY LOCATION**

Zoning File Name Highland Village mixed use development ( 15-011-695 )  
Address / Location 735 Cleveland Ave S between Highland Parkway and Pinehurst Ave

**TYPE OF APPEAL:** Application is hereby made for an appeal to the:

**Planning Commission**, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

**City Council**, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: April 24, 2015 File Number: 15-011-695

**GROUND FOR APPEAL:** Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission.

See Attached Exhibit A.

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Attach additional sheets if necessary

Appellant's Signature

*[Handwritten Signature]*

Date

5/4/15

City Agent

*[Handwritten Signature]*

5-4-15

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**Attachment A**  
**To Appeal Of Planning Commission's**  
**April 24, 2015 Decision**

The grounds for appeal are set forth in that certain correspondence dated April 15, 2015 signed by 59 neighbors to the proposed development, which is attached hereto and incorporated herein in its entirety. The Planning Commission and its Zoning Committee failed to investigate, analyze, and make proper findings regarding the proposed Highland Village Mixed Use Development site plan, which does not meet the criteria listed in Section 61.402(c) of the St. Paul Legislative Code (the "Code") including:

- (1) The city's adopted comprehensive plan and development or project plans for sub-areas of the city.
- (4) Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
- (5) The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.
- (6) Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
- (7) Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.

Without limiting the foregoing, the following are specific examples of defects in the Planning Commission's decision:

**1. The Site Plan Approved By The Planning Commission Does Not Comply With The Maximum Height Requirements Of St. Paul City Code § 66.331.**

Section 66.331 of the Code contains three material provisions as it relates to the height of the proposed building. First, Table 66.331 (traditional neighborhood district dimensional standards) sets forth dimensional standards that are specific to traditional neighborhood districts. The table limits the maximum building height for mixed use buildings in areas zoned T-2 to no greater than 35 feet. Second, Note (e) to Table 66.331 of the Code states in pertinent part that "height of structures may exceed the maximum *if set back from side and rear setback lines a distance equal to additional height.*" (emphasis added). Third, the Note (e) to Table 66.331 also requires that structures "shall be no more than twenty-five (25) feet high along side and rear property lines abutting [R-4] residential districts" provided that "structures may exceed this twenty-five (25) foot height limit if stepped back from side and rear property lines a distance equal to the additional height."

The Zoning Committee and Planning Commission's determination that the proposed building met the requirements of Section 66.331 was in error. By its plain and unambiguous language, the Code

permits a mixed-use building to exceed the 35 feet height limitation *only* “if set back from side and rear setback lines a distance equal to additional height.” Here, the height of the proposed building is 45 feet (see Section 60.203. – B, defining Building Height to mean “The vertical distance measured from the established grade to the highest point of the roof surface for flat and shed roofs). The Code (Section 60.220.-S) defines “setback” as the “distance required to obtain front, side or rear yard open space provisions of this code, *measured from the lot line to the above-grade faces of the building.*” (emphasis added). All faces of the building – not just the faces above the maximum height of 35 feet – must be set back when a building exceeds the maximum height of 35 feet. Thus, under the plain language of the Code, the building must be set back 10 feet from all side and rear setback lines before a height of 45 feet is permitted.

The fact that portions of the building’s third and fourth floors have been “stepped back,” does not change this result. Note (e) to Table 66.331 of the Code limits building height along side and rear property lines to 25 feet, unless the proposed building is stepped back. It further permits heights above 25 feet only if the structure is “stepped back from side and rear property lines a distance equal to the additional height.” However, this does not change the separate requirement in Note (e) that limits overall building height to 35 ft., absent specified setbacks from the established setback lines – that requirement must also be met under the plain language of the Code.

Given that the proposed building does not meet the dimensional standards required for an area zoned T-2, the Council must reverse the decision of the Planning Commission.

## **2. The Planning Commission Failed To Investigate And Analyze The Impact Of The Proposed Building On Both Light And Solar Access.**

The Planning Commission and its Zoning Committee failed to investigate and analyze the impact that the proposed building would have on light and solar access by the neighboring properties. Instead, the Planning Commission appears to have relied exclusively on a study commissioned by the developer-related entity, Cleveland Holdings LLC, which purported to analyze the “shading effects on neighboring homes,” but really only analyzed the effect of the proposed development on the economics of a single solar system at a single home in the neighborhood, rather than the impact of added shading on the neighborhood as a whole.

Section 60.109 of the Code requires that “all uses and development shall comply with all other applicable city, local, regional, state and federal laws and regulations.” The Metropolitan Land Planning Act (Minn. Stat. § 473.859) requires that any land use plan “shall contain ... an element for protection and development of access to direct sunlight for solar energy systems.” The City’s Comprehensive plan includes such an element. (Comp. Plan, LU-3.19)

On March 9, 2015, the Planning Commission received information regarding a Dynamic Shadow Study conducted by neighbors to the proposed development. This Study demonstrated the impact of the proposed new building on the light and solar access at the property located at 2074 Highland Parkway.

On or about March 11, 2015, the City received a formal request to conduct an analysis of the impact of the proposed development on solar and light access. The City’s representative, Ann

Hunt, indicated that the City likely “could not afford” such a study, but that she would “investigate” this issue and since it was the “first solar access case” in the city.

On March 18, 2015, the City’s representative Tom Beach admitted that the City currently had no objective standards to evaluate solar access issues.

In response to the neighbor’s study regarding the solar loss at the property located at 2074 Highland Parkway, the developer commissioned a study that purported to evaluate the loss of economic value for a potential solar energy system at a different property, namely 2078 Highland Parkway.

Prior to rendering its decision, the Planning Commission did not conduct an independent investigation or analysis of the impact of the proposed development on solar and light access. Among other things, the Planning Commission failed to analyze or consider (1) the fact that certain properties neighboring the project will lose nearly 50% of direct sunlight access during many weeks of the year; (2) that any study or analysis of the impact the proposed building would have on the neighboring properties must consider the neighborhood as a whole, not just a single property hand-picked by the developer; (3) the impact of light loss on quality of life, separate from access to solar for energy generation, and (4) that the proposed development may dramatically limit the neighborhood’s ability to participate in the creating of a Community SolarNext Garden (see Minn. Stat. §216B.1641) or other solar initiatives because of the shadows cast by the new building.

In short, the study commissioned by the developer should have been the start of the discussion regarding solar and light access, not the end of it. The Planning Commission failed to conduct any meaningful investigation or analysis of the impact that the loss of solar and light access will have on neighboring properties. As such, the Council should reverse the Planning Commission’s decision approving the site plan, or alternatively, send the site plan back to the Planning Commission for further discussion and analysis of these important factors.

### **3. The Planning Commission Failed To Investigate And Analyze The Impact Of The Proposed Building On Neighboring Property Owner’s Privacy Interests.**

The Planning Commission was required to deny the site plan if the arrangement of the buildings would unreasonably affect the abutting property and/or its occupants. However, despite its obligation, the Planning Commission and its Zoning Committee failed to investigate and analyze the impact of the proposed building on neighboring property owner’s privacy interests.

The proposed four story development unreasonably and adversely affects the privacy of its neighbors. Many of the development’s 53 apartments and its second floor Edina Realty office directly face residential properties. People living in small, traditional single family houses regularly spend time in their yards and on their first floor of their homes. The occupants of the second, third and fourth floors of the proposed building will be able to look directly into the yards and windows of these homeowners who will have no way to protect and preserve their privacy.

This critical issue was raised specifically to City representative, Tom Beach, on March 18, 2015. Specifically, Mr. Beach was asked to require the developer to address the privacy concerns of neighbors. Mr. Beach responded that privacy “might be a problem if [there was] a teenage girl

who sunbathes” next to the development, but privacy was not a concern for the retirees who actually live there.

The Planning Commission and its Zoning Committee conducted no independent investigation or analysis of the legitimate concerns raised by neighbors regarding privacy. Since privacy is not a right reserved for only certain neighbors, the Planning Commission was obligated to avoid an unreasonable adverse impact on privacy by either rejecting the plan to construct a four story building or by conditioning approval of the site plan on certain privacy protections.

**4. The Planning Commission and its Zoning Committee failed to address the proposed development’s adverse impact on pedestrian safety at the southwest corner of Cleveland and Highland.**

The current site conditions at the southwest corner of Cleveland and Highland include a very narrow sidewalk and two utility/traffic control poles very close to the curb. These poles interfere with pedestrian movement and require a pedestrian intending to cross the street to stand on the graded corner section and often compete with other pedestrian and bicycle traffic on the side walk. The proposed development will make this corner considerably more dangerous because the current plan is to construct a four story building tight to the inner edge of this corner, leaving even less room for pedestrians to maneuver and stand safely. Further, a new vehicle access point is contemplated for just 100 feet west of this corner. This access point will result in additional traffic at the corner and could distract drivers making it more difficult to avoid pedestrians at this corner.

Despite this issue being raised at the public hearing, the Planning Commission and its Zoning Committee have failed to address this important safety issue. For example, they did not discuss or analyze the relocation of the utility poles, the widening of the sidewalk, or the requirement of a limited set back to ensure pedestrian safety at this corner, much less, condition approval of the site plan on some change ensuring pedestrian safety.

Notably, the draft SRF report commissioned by the developer acknowledges that the construction of the future structure may adversely impact the safety of this corner. (See draft SRF Report, p. 21) (acknowledging that “special consideration” will be needed to limit any sight distance impacts from future structures)). The draft SRF report indicates that “special considerations will be made,” however, SRF has no independent ability to control future construction of buildings at the site. Instead, the Planning Commission or its Zoning Committee were obligated to condition site plan approval on the developer taking steps to ensure this corner remains safe for pedestrians.

Because the Planning Commission and Zoning Committee failed to study, analyze or address pedestrian safety issues at southwest corner of Cleveland and Highland, the Council should reverse the site plan approval.

**5. The Planning Commission and its Zoning Committee failed to address a myriad of other issues relating to the proposed development’s adverse impact on the neighborhood.**

The Planning Commission and its Zoning Committee failed to address multiple other issues raised by community members prior to and during the public hearing on this matter. By way of example, but not limitation:

- (1) On-street parking: This area already has significant problems with tight on-street parking. Neither the developer, nor the draft SRF report address this issue, including analyzing whether the proposed development will make it more difficult for current residents of the neighborhood to find on-street parking.
- (2) Ingress/egress on Pinehurst: The draft SRF report indicates that there are currently no published ADT volumes available for this segment, yet the Planning Commission and the Zoning Committee required no study of the potential adverse impacts of this new access point.
- (3) Garbage and recycling collection: The collection of garbage and recycling appears to originate in the alley between the proposed new development and the existing residential houses. The Code requires that trucks accessing the site make all turns on the site, but it appears that the trash and recycling trucks will back onto the site from the alley.
- (4) On-street loading and unloading: The draft SRF report indicates that street loading and unloading will be considered. Per the Code, deliveries are to be made onsite, not from the street.

The Planning Commission and its Zoning Committee failed to analyze or address these important safety and livability concerns. As such, the Council should reverse the site plan approval.

April 15, 2015

Donna Drummond  
Director of Planning  
c/o Zoning Committee  
City of Saint Paul

re 15-011-695 Highland Village mixed use development

Dear Zoning Committee Members:

We residents of Highland Park would be the immediate neighbors of the mixed use development planned in Highland Village at 735 South Cleveland Avenue between Pinehurst Avenue and Highland Parkway (the "Development"). Over the last several months, we've learned about the proposed development, followed it through one architectural revision, and expressed our significant concerns on numerous issues to the developer, members of City of Saint Paul staff, our representatives at the Highland District Council, Saint Paul City Councilmember Chris Tolbert, and others. We understand that these concerns led you to conduct the site plan review process, as opposed to delegating the process to City staff. Your review is absolutely warranted, we appreciate your time, and we believe that, after review of the Development in accordance with the City of Saint Paul Zoning Code, you, too, will conclude that it is not the right project for this very important and visible neighborhood location.

#### **Standards for Site Plan Review**

The process of site plan review, as it is codified in the Zoning portion of the City of Saint Paul Code of Ordinances (the "Code"), mandates consideration of the following 11 criteria when evaluating an application for review and approval. Section 61.402(c) of the Code requires consistency with *all* of these standards. *If you conclude that the Development is inconsistent with even one part of one of these criteria, you must deny approval of the site plan.*

**"Site plan review and approval.** In order to approve the site plan, the planning commission *shall* consider and *find* that the site plan *is consistent* with:

- (1) The city's adopted comprehensive plan and development or project plans for sub-areas of the city.
- (2) Applicable ordinances of the city.
- (3) Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.
- (4) Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.

- (5) The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.
- (6) Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
- (7) Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.
- (8) The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.
- (9) Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.
- (10) Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.
- (11) Provision for erosion and sediment control as specified in the Minnesota Pollution Control Agency's "Manual for Protecting Water Quality in Urban Areas."

The criteria range from specific – consistency with the applicable ordinances of the City – to more broad – consideration of the implications of a proposed development on the surrounding neighborhood and requiring consistency with the City’s Comprehensive Plan.

### **Summary**

Within the framework provided above, we, first, urge you to examine whether the Development actually meets the T-2 Code requirements, especially with regard to setback and height.

The Development must also meet the T-2 design applicability standards for managing transitions in density or intensity to lower density neighborhoods through careful attention to building height, scale, massing and solar exposure.

We also urge you to resist the idea that consistency with the T-2 dimensional standards of the Code, alone, should result in your approval of the Development. To the contrary, the criteria above recognize that meeting massing and sizing requirements is just a portion of what is necessary for an approved site plan. You must consider all 11 criteria – which themselves are found in the Code itself – for an approval.

Second, we urge you to examine whether the Development objectively meets other portions of the Code, including its purpose and intent to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community; ensure adequate light, air, privacy and convenience of access to property; lessen congestion in public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles; provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic; encourage of a compatible mix of land uses, at densities that support transit, that reflect the scale, character and urban design of Saint Paul's existing traditional neighborhoods; and conservation and improvement of property values.



Importantly, all of these intentions and purposes are objective and can be quantified.

Third, we urge you to examine the remainder of the above 11 criteria, paying specific attention to whether the Development is consistent with the City's adopted comprehensive plan. The standard for your consideration should not be simply whether the Development meets the comprehensive plan's long-term guidance for the property as part of a mixed-use corridor, but whether the Development demonstrates compliance with the specific components of the comprehensive plan set forth to guide development over the next fifteen years, including protection and promotion of solar energy and zone transition, density and development standards that are so important in neighborhoods where residential and commercial uses are located together.

**(1) Setback and Height**

Returning to the building height – mixed-use properties in T-2 zoning districts are not permitted to be greater than 35 feet in height unless they are stepped back from side and rear property lines by a distance equal to the additional height.

Notwithstanding that this exception allows monolithic tower structures so long as the building height to setback ratio is met, the setback must be measured from *all* of the above-ground building faces and not just the top story. As a result, the Development cannot be approved because its height is higher than the side and rear setback distances permitted in the Code.

Section 60.220 of the Code defines *setback* as the distance required to obtain front, side or rear yard *open space* provisions of the Code is measured from the lot line to the above-grade *faces* of the building. Importantly in this Code definition, setback relates contextually to “open spaces,” and the word “faces” is plural. This means that *all* of the above-ground faces must be setback, not just the face of the upper story.

Further, Section 2.02 of the Code is in agreement, indicating that words and phrases shall be construed so far as possible in their plain, ordinary and usual sense except that technical words and phrases having a peculiar and recognized meaning in law shall be understood according to their technical import. It is the Planning Commission's duty to apply the Code in this instance according to its plain and unambiguous meaning – regardless of whether it has done so consistently in the past. The risk that adverse impacts will result from this Development is significant, and the Commission should therefore strictly apply the actual language of the Code, not rely on unwritten rules or subjective comparison to so-called past practices.

Finally, we ask whether the City interprets the definition of setback differently between residential and commercial properties. It is difficult to imagine a residential homeowner in a comparable scenario getting a building permit by setting only an upper story back from a property line.

**(2) Compliance with Code Provisions**

(a) The Development *neither promotes nor protects the public health, safety, morals, aesthetics, economic viability and general welfare of the community*. Neighbors have objectively and voluminously voiced concerns about increased traffic and alley circulation dangers, the safety of pedestrians at the southwest corner of Highland Parkway and Cleveland Avenue, the health and safety impact of garbage and recycling collection, the loss of privacy and sunlight, the aesthetics of the west-facing façade, an increase in noise and disturbances from apartments, motorcycle parking location, and from an audible traffic signal, and we have shared concerns about storm

water collection given the area's high water table. In total, these numerous, serious concerns add up to an overall concern about general welfare in our community caused by the Development.

(b) The Development objectively *does not ensure adequate light*, because adjacent residential homes will be blocked from sunlight. It does not require complex science to factually state that a long, "L" shaped, four-story building will not ensure the same amount of sunlight to adjacent two-story homes. Solar access will be discussed in more detail later in this document.

(c) The Development *does not ensure privacy*, because it has 27 apartments, including 16 decks and balconies that face two-story residential properties. Given that people living in small, traditional R-4 homes spend the majority of their waking time on the first floor and in their yards, these homeowners will factually lose their privacy to approximately 40 apartment dwellers on the second, third and fourth floors of this building.

(d) The Development *has not ensured convenience of access to adjacent properties*. Even without complex calculations, it is logical that a large, intense building in an area with complex alley flow will diminish convenience of access to our homes. We neighbors have no assurance that access to our property will continue to be convenient.

(e) The Development *does not lessen congestion in public streets*, even though it provides off-street parking for motor vehicles. It does not *lessen* congestion because factually there will be *more* cars and delivery trucks accessing this property and using public streets. Highland Village is known by the City to have significant parking constraints, and for many years homeowners on Pinehurst Avenue and Highland Parkway have voiced concerns to the Highland District Council and Ward 3 Councilmembers about our inability to park our cars on our street. The City has not quantified the neighborhood's current parking needs, nor provided an estimate of how parking will be impacted by the Development.

(f) The Development *will not have off-street loading and unloading for all commercial vehicles* and this too will not lessen congestion.

(g) The Development *has not quantified provisions for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic*. Streets in Highland Village have complex traffic patterns and underperforming intersections. Dynamic modeling shows what happens to congestion and circulation under a wide range of traffic scenarios. Even without these quantifications, it is logical that a large, intense building in an area with poor traffic flow is unlikely to improve the safe and efficient circulation of transportation. Emblematic of this concern is the strong objection by neighbors to an audible signal at the north end of the Development which, by virtue of its existence, exemplifies how poorly traffic is likely to circulate in this area.

(h) The Development *does not reflect the scale of Saint Paul's existing traditional neighborhoods*. Our traditional Highland Park neighborhood has both residential and commercial buildings, inclusively, whose scale is both objective and quantifiable. At four stories, the Development is two to four times taller than every one of our homes. With a Floor-Area-Ratio ("FAR") of approximately 2.1 times, the Development is 3 to 5 times denser than our homes. That the Development is in a T-2 zone and our homes are in an R-4 zone is irrelevant to the reading of this section of the Code, which simply states the intent of the Code to reflect the scale of the *neighborhood* and not just the scale of a *zone*.

(i) The Development *has not shown to neighbors that it will conserve and improve our property values*. We residential property owners bear a significant risk with the Development near our homes. Our diminution of value is quantifiable and objective but we have not seen this analysis.

(j) The Development *does not meet the design applicability standards for transitions to lower density neighborhoods*, because careful attention has not been made to density or intensity (including building height, scale, massing and solar exposure) as shown in the analysis above. There is an abrupt, binary change of height, scale, massing and solar exposure when the Development is adjacent to our homes, and the intensity of its land use is exponentially greater than the intensity of land use by our homes.

### **(3) Compliance with Other Parts of the Site Plan Review Criteria in the Code**

(a) The *Development is not consistent with the City's Comprehensive Plan*. The Code clearly states that the Development must be consistent with *all* of the applicable portions of the Saint Paul Comprehensive Plan (the "Plan"), not just generally consistent with its guidelines for overall land use. The Development is not consistent with a number of provisions of the Plan including, but not limited to, solar energy and zone transition issues such as density and development standards in residential and commercial areas, how alleys can serve small commercial buildings when they abut residential neighborhoods, and design standards to provide a transition between single-family houses and nearby taller buildings.

The Plan, passed by the City Council in early 2010, is the main (but not exclusive) land use control document describing these solar energy and transition issues. It has been four years and, to the best of our knowledge, these planning and zoning studies have neither been conducted nor implemented and codified.

Solar Energy. The Development unequivocally obstructs access to solar energy. This loss of sunlight conflicts not only with the Code to ensure and preserve access to light, but also the Metropolitan Land Planning Act (Minnesota 473.859 Subd 2b) as administered by the Met Council, and Minnesota statutes 394.25 Subd 2 and 394.27 Subd 7. That the City, as members of ICLEI for 20 years, would knowingly conflict with state law relating to solar energy is difficult to understand.

Our contention is that shadows on adjacent property lines should be "integrated" over each/every day of the year and measured as an average "percentage reduction of daylight" and as a "maximum percentage reduction of daylight." In this way the impact to adjacent homeowners can be quantified. By our own measurements, the home at 2074 Highland Parkway will get an average of 34% less sunlight throughout the year, and nearly 50% less sunlight during the winter. Many other adjacent properties will get significantly less sun.

Solar energy experts say that any loss of solar access reduces the efficiency of solar panels. Regardless of whether these properties have installed solar arrays already, solar access laws are meant to provide access to any homeowner who is or may someday wish to install a solar array. On November 17<sup>th</sup>, 2014, the owners of 2078 Highland Parkway began the process of installing an array on their property through a company called Geostellar, Inc. of Martinsburg, West Virginia.

The Plan promotes access to sunlight for solar energy systems in new or rehabilitated residential, commercial, and industrial developments to the extent possible. The Plan states

that the City will prepare a study on tools, techniques, and regulations to facilitate increased usage of solar energy systems, either as standalone systems or as supplements to conventional energy sources, including, but not limited to: orientation of buildings, lots, and streets to capture the maximum amount of sunlight; building and site design, and the permissible levels of shading by structures and vegetation; and determination of minimum degree of solar access protection needed to produce maximum amount of solar energy. To the best of our knowledge in the past four years these studies and their implementation and codification have not been completed by the City.

Transition Issues. The Plan calls for studies to evaluate potential problems when large commercial areas abut residential homes, and for standards to be developed in these transition areas. The Development is in the second-most liberal traditional neighborhood zone (T-2) and it abuts the densest residential zone (R-4), and yet there appear to be no additional studies or standards published by the City for such a transitional combination. See specifically the language in the following sections of the Plan:

Density and development standards (LU-1.3). “The study will focus on density and other development standards, including, but not limited to, height, setbacks, lot coverage, scale, and massing.”

How alleys can serve small commercial buildings when they abut residential neighborhoods (LU-2.6). “Prepare a zoning study to determine how alleys can be used to serve small-scale industrial firms and commercial office buildings when they abut residential neighborhoods; issues will include, but not be limited to access, curb cuts on adjacent streets, loading areas, and buffers for residential uses.”

Design standards to provide a transition between single-family houses and nearby taller buildings (LU-3.2). “Prepare design standards that provide a transition between single family houses and nearby taller buildings. Issues that the design standards should address include, but are not limited to, height, mass, scale, and architectural context. Taller buildings might be located in Neighborhood Centers or Mixed-Use Corridors, at the edges where they abut single-family neighborhoods.”

(b) The Development *does not protect adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.* Much in this document voices concerns over surface water, sound, sight, light, views and land uses. Here however we would like to address another issue related to the cumulative effect of these concerns. We believe it is not reasonable for us neighbors to bear the burden of the impact of the Development on our community. In other cases it may be reasonable for us to bear some burden for one or two minor inconveniences. In this case there are numerous significant diminutions to our land use and value, and the aggregated effect is substantial and unreasonable.

(c) The Development *does not arrange buildings, uses and facilities to assure abutting property and/or its occupants will not be unreasonably affected.* In this document we have written about the size and intensity of this building, but here we would like to address the issue of assurances. Our concern here is that we have been given no assurances of any kind that the building uses will not unreasonable affect abutting property owners.

Privacy. We have written and spoken to the City about privacy issues, given that a four story building with many west-facing balconies and large windows will overlook homes and yards with no more than two stories. We have not been given assurance that our privacy will be protected.

Garbage and Recycling Removal. Garbage collection in the alley rather than on the back (west) portion of the property is unreasonable. Three large dumpsters will be located less than 15 feet of the side of the home at 2074 Highland Parkway. In addition, the collection of rubbish and recyclables means more trips of garbage and recycling trucks in the alley, and the noise of these trucks will ripple down the alley. More people will be living in the apartments than live in homes in the alley, and four first-floor commercial properties, including restaurants, and a second floor office (Edina Realty) will generate significant waste. We have not been given assurance that we will be not be unreasonably affected by the garbage and recycling collection practices of the Development.

Ingress and Egress. The egress/ingress on the north side of this property and alley is treacherous today, and will not become less so with significantly more traffic entering and leaving the Development. The City proposes adding an audible traffic signal to minimize the dangers of collisions and pedestrian safety in this area. We strongly oppose this measure as unreasonable because it will create more noise and because better, more passive traffic management tools exist to improve public safety. The City, to the best of our knowledge, has not suggested eliminating parking spaces on Highland Parkway, which, in our opinion, is a better solution to improve sight lines and safety in this area.

Noise. The Development puts motorcycle parking on the west surface lot and we think this is unreasonable. These motorcycles would start up and discharge their exhaust pipes toward a four story building and create an “echo chamber” down the alley. Further, we have been given no assurances that noise and disturbances from apartments in the Development will not be unreasonable.

Alley Setback. We interpret a part of Section 66.331(k) of the Code to say that the setback for interior lot lines shall be a minimum of thirteen (13) feet from the centerline of an adjoining alley. The 20 foot wide alley shared by residents of Highland Parkway and Pinehurst Avenue makes a 90 degree turn northward at the northwestern most part of the Development. We believe that the northwest portion of the Development must be setback from the alley an additional three feet to comply with this ordinance.

(d) The Development *does not create energy-conserving design through landscaping and location, orientation and elevation of structures.* The tall height, the higher elevation compared to homes west of the Development, the orientation east of homes that blocks morning light, as well as the “L” shape on the south side that blocks midmorning light, reduces the ability for adjacent homes to conserve energy because we will get less sunlight and, as a result, will have higher energy costs.

(e) The Development is *not consistent with safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.* We have identified several issues relating to this element of the site plan review criteria.

Parking. The City has given no assurances that parking problems in Highland Village will be no worse as a result of the Development. Because the proposed underground parking is shared by both the building residents and the commercial tenants, the City must examine exactly how the proposed parking will work. We cannot reasonably conclude that parking is sufficiently addressed without knowing what kinds of businesses will occupy the proposed commercial spaces in the Development.

Traffic Circulation. There are many concerns related to traffic circulation. The City has not given assurances that pre-existing traffic circulation issues will improve.

An alley going south to Highland Parkway/Pinehurst Avenue is very close to the egress/ingress of the Development, and another alley going north onto Highland/Eleanor is close to the ingress of US Bank. All seven of these entrances and exits are within 100 feet of the sub-performing traffic light at the Highland Parkway and Cleveland Avenue intersection. Today, cars traveling eastbound on Highland Parkway frequently back up to the ingress/egress and to the alley making it even more difficult to make a right hand turn from the alley or the property onto Highland Parkway. It is also difficult for Edina Realty employees and clients to make left hand turns to go west on Highland Parkway.

Edina Realty currently has an ingress and egress on the south side of its land on Pinehurst Avenue. These are used very infrequently, mostly during holidays when Edina Realty gives away Christmas trees. The Development proposes ingress and egress that would be used *very frequently*, with cars and delivery vehicles entering and leaving a highly trafficked collector street with an already poor right-of-way.

Homeowners on Highland Parkway, Pinehurst and Eleanor Avenues frequently observe vehicles habitually averting congestion in our area by using local alleys and private property for general traffic circulation.

Southwest Corner of Highland Parkway and Cleveland Avenue. The sidewalk on the southwest corner of Highland and Cleveland is narrow, graded to the street and has two traffic signal poles located very close to the curb. It is a narrow, dangerous spot already, and will become more dangerous if the Development “holds the corner” there. Eastbound Highland Parkway drivers will have a hard time seeing around the corner and residents fear being run over. The City has not provided assurances that this corner will be safe.

Pedestrian Safety Due to Increased Shadows. The Development casts long shadows on Highland Parkway and Cleveland Avenue. These shadows reduce temperatures on sidewalks and streets and make it more difficult for snow and ice to melt in the winter sun. The City has not given assurances that pedestrian safety will improve at this intersection. This is important for residents with children who use the intersection to walk to and from local elementary schools.

### **Conclusion and Recommendations for Denial**

The proposed Development is inconsistent with the majority of the required criteria for site plan approval. Considering the totality of the implications of the proposed Development on the surrounding neighbors and neighborhood, we strongly urge you to deny approval of the proposed

site plan. Your findings for denial should include that the proposed site plan does not meet the criteria listed in Section 61.402(c) of the Code including:

- (1) The city's adopted comprehensive plan and development or project plans for sub-areas of the city.
- (4) Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
- (5) The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.
- (6) Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
- (7) Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.

In addition, the proposed site plan does not meet the plainest reading of the setback standards for T-2 zoning, and it is inconsistent with many applicable zoning and other City ordinances.

cc Chris Tolbert, Michelle Beaulieu, Kathy Carruth, Tia Anderson, Amy Salmela

Tom Ordahl 2092 Eleanor Ave	Ray Getsug 2090 Highland Pkwy	Leisa Knych 2110 Pinehurst Ave	Jim DuCharme 2114 Highland Pkwy
Tom Kramer 2103 Highland Pkwy	Paula Farell 2118 Eleanor Ave	Laura Fries 2096 Eleanor Ave	Jim Cech 2115 Highland Pkwy
Tim Gross 2107 Pinehurst Ave	Pam Zagaria 2118 Highland Pkwy	Kris Young 2095 Highland Pkwy	Jeffrey Compton 2079 Pinehurst Ave
Tim Giuliani 2087 Pinehurst Ave	Pam Smyth 2077 Highland Pkwy	Kevin Smyth 2077 Highland Pkwy	Janet Dickelman 2086 Highland Pkwy
Terry Dickelman 2086 Highland Pkwy	Nancy Shaffer 2100 Eleanor Ave	Katie Holtz 2083 Pinehurst Ave	James Little 2076 Eleanor Ave
Teri Youngdahl 2086 Eleanor Ave	Mike Youngdahl 2086 Eleanor Ave	Kathy Ordahl 2092 Eleanor Ave	Jack Mueller 2111 Pinehurst Ave
Susan O'Connor Von 2094 Pinehurst Ave	Mike Holtz 2083 Pinehurst Ave	Kathie Cech 2115 Highland Pkwy	Jack Kirr 2078 Highland Pkwy
Stephanie Thigpen 2099 Pinehurst Ave	Matt Mead 2075 Highland Pkwy	Kate Hunt 2081 Highland Pkwy	Howard Miller 2081 Highland Pkwy
Shawn Mullarky 2085 Highland Pkwy	Marty Fudenberg 2107 Highland Pkwy	Karla Hollinshead 2114 Pinehurst Ave	Howard Kelly 2096 Highland Pkwy
Ron Von 2094 Pinehurst Ave	Margaret Galvin 2103 Pinehurst Ave	Judy Giuliani 2087 Pinehurst Ave	HJ Schmidt 2074 Highland Pkwy
Rick Dagenais 2111 Highland Pkwy	Lydia Schwartz 2082 Highland Pkwy	John Cox 2096 Eleanor Ave	Henry Waldenberger 2115 Pinehurst Ave



Elissa Getsug  
2090 Highland Pkwy

Beverly Kelly  
2096 Highland Pkwy

Deb Slee  
2074 Highland Pkwy

Berit Peterson  
2111 Highland Pkwy

Colleen Zuro-White  
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Ashley Kirr  
2078 Highland Pkwy

Chris Knopff  
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Andrew Thigpen  
2099 Pinehurst Ave

Charlie Broadnax  
2102 Highland Pkwy

Cerise Blanchard  
2114 Highland Pkwy

Cathy Kramer  
2103 Highland Pkwy

Caroline Little  
2076 Eleanor Ave

Carol Broadnax  
2102 Highland Pkwy

Birdie Mullarky  
2085 Highland Pkwy

Bill Shaffer  
2100 Eleanor Ave