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February 10, 2015

Council President Kathy Lantry  
City of St. Paul  
320-C City Hall  
15 Kellogg Blvd., West  
Saint Paul, MN 55102

**Via Email and US Mail**

Re: East 7th & Bates Senior Apartments: Conditional Use Permit Standards

Dear Council President Lantry:

This firm represents St. Paul Leased Housing Associates IV, LLLP, managed and operated by Dominion (together referred to as "Dominium"), with regard to the application for a conditional use permit ("CUP") to increase the height of the proposed affordable senior housing building (the "Project") at 720 7th Street East (the "Property"), in the City of St. Paul (the "City"). On January 16, 2015, the City Planning Commission unanimously approved the CUP to increase the allowed height of the Project from 35 feet to 45 feet. On January 26, 2015, an appeal was filed (the "Appeal") by Dudley Younkin on behalf of himself and other members of the Dayton's Bluff Neighborhood (the "Appellants"). This letter addresses the legal standard for granting the CUP and the findings required under the City Zoning Code (the "City Code"), and confirms the method used for determining the average grade of the Property.

**Background**

The Project is located at the corner of East 7th Street and Bates Avenue and is part of a larger mixed-use development of the former Hospital Linens Site (the "Site"), along East 7th and bounded on the northeast and southwest by Bates Avenue and Maple Street. The Project will include 113 units of affordable senior housing, as well as amenities, such as a salon for residents living on-site. The Project is designed to be integrated into the Mississippi Market grocery store development on the northeast portion of the Site, and the two uses will share a public plaza, vehicular access and storm water infrastructure. The Project consists of four stories of housing above a primarily below-grade parking area, which is partially exposed where the grade of the Site is lowest, along Bates Avenue. Due to the grade changes on the Property, the exposed elevations of the Project range from five stories along Bates to three stories measured approximately midblock on East 7th Street. The tallest portion of the Project is approximately 44.35 feet above the average grade of the Property. The Project has obtained Heritage Preservation Commission ("HPC") approval and satisfies all zoning code requirements in the applicable T2 Traditional Neighborhood District ("T2 District"), including: density, parking, design, access, and use with the exception of the building

height. The T2 District permits a maximum height of 35 feet as of right, except where increased by CUP. Thus, due to the grade issues, the proposed 44.35 foot Project height requires the CUP to increase the height.

## Discussion

### 1. Legal Standard for Review of a CUP

Review of a CUP is a quasi-judicial decision, requiring both a factual determination about the proposed use and an exercise of discretion in determining whether to permit the use.<sup>1</sup> In zoning decisions that are quasi-judicial, such as CUPs, “public policy has already been established and the inquiry focuses on whether the proposed use is contrary to the general welfare as already established in the zoning ordinance.”<sup>2</sup> Accordingly, the reasonableness of a CUP decision is determined with reference to the applicable ordinance.<sup>3</sup>

Courts will intervene to reverse a city’s denial of a CUP where the denial is arbitrary.<sup>4</sup> Denial of a CUP is arbitrary when the applicant establishes that “all of the standards specified by the ordinance as a condition to granting the permit have been met.”<sup>5</sup> This standard is in contrast to zoning matters that are legislative in nature (enacting zoning ordinances or rezoning) where the city is “formulating public policy, so the inquiry focuses on whether the proposed use promotes the public welfare.”<sup>6</sup> If reasons given are legally insufficient or not supported by facts in the record, the denial is arbitrary and will be reversed by the courts.<sup>7</sup>

### 2. The Project Meets the Findings Required Under City Code Section 61.501.

The City Planning Commission unanimously passed a resolution to approve the CUP based on the determination that the Project satisfied the five findings required in City Code Section 61.501. Those findings are as follows.

- a. The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.

The Project satisfies this finding based on consistency with multiple policy documents that designate the Site for housing or mixed use development. These documents include the City’s Comprehensive Plan’s (the “Comp Plan”) Housing and Land Use Chapters, the Near East Side Road Map, and the East 7th Street Design Guidelines. Consistent with the Planning Commission’s resolution, the Project is consistent with and furthers the policies established in these policy

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<sup>1</sup> *Shetka v. Aitkin County*, 541 N.W.2d 349, 352 (Minn.App.1995).

<sup>2</sup> *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn.1981).

<sup>3</sup> *Id.*

<sup>4</sup> *Zylka v. City of Crystal*, 167 N.W.2d 45, 49 (Minn.1969).

<sup>5</sup> *Id.*

<sup>6</sup> *Honn*, 313 N.W.2d at 417.

<sup>7</sup> *Trisko*, 566 N.W.2d at 352.

documents. Many of the policies relate to encouraging a mix of uses and the creation of senior and affordable housing. When taken together, the extent, location, and intensity of the Project is overwhelmingly consistent with and supported by the applicable Comp Plan policies and other policy documents adopted by the City Council.

(1) Comprehensive Plan: Land Use Plan

The Project is consistent with the City's Comp Plan, which designates the Site as an "opportunity site" on a "Mixed Use Corridor." Opportunity sites are areas identified "for mixed use development or employment centers." The Mixed Use Corridor designation designates areas where "two or more of the following uses could be located: residential, commercial, retail, office, small scale industry, institutional, and open space." It is important to note that, the Comp Plan is clear that the mixed-use nature of the corridor does not require that every building needs a mix of uses and that the mix of uses "may be within a building or in buildings within close proximity." Comp Plan LU-39. Here, the Project is part of a mixed use redevelopment of the larger Hospital Linens Site; the Mississippi Market and the Project combined contribute to the diverse mix of uses along East 7th Street and contribute to the goals of the Comp Plan's Land Use Chapter.

The project is also consistent with a number of other policies in the Comp Plan's Land Use Chapter, including Policy 1.40, which aims to promote the development of housing that provides choices for people of all ages, including seniors. It also furthers Policy 1.41, which promotes the development of a range of housing types and housing values in each of the districts.

(2) Comprehensive Plan: Housing Policy

The Project is also consistent with the Comp Plan's Housing Policy chapter, which establishes policies to increase quality housing stock for seniors, as well as other affordable housing developments. For example, Policy 2.18, supports the expansion of housing choices for seniors, particularly in neighborhoods that are underserved; Subpolicy 2.18(a) further states that the City should encourage the market to provide senior housing at sites that are close to amenities attractive to seniors, including transit, paratransit, trails, and parks and recreation, health care providers, services, retail uses, and institutions of higher education. A number of policies also directly encourage new affordable housing opportunities, such as the proposed development, including Policy 3.2, which supports new housing opportunities for low-income households throughout the City; Policy 3.3, which aims to provide affordable housing in new production projects; and Subpolicy 3.3(f), which states that the City should explore and implement demonstrated incentive zoning tools, including density bonuses, parking reductions, and other creative mechanisms, to facilitate and encourage the market to produce new affordable housing. The Project furthers all of these policies.

(3) Near East Side Road Map

The Project is also consistent with the Near East Side Road Map (the "Roadmap"), which designates the Site as a redevelopment opportunity for housing, mixed use, or small commercial-industrial." Roadmap 6. The Roadmap's overall vision to build "a walkable, mixed use

commercial district.” Roadmap 3. The mix of uses on the Site, including the proposed public plaza, the active uses on the street, and the integration of the Project into the Mississippi Market development will all further the overall vision of the Roadmap.

(4) East 7th Street Design Guidelines

The Project is also consistent with the East 7th Street Design Guidelines (the “Guidelines”), although the Guidelines are merely intended to be an “advisory supplement” to the zoning ordinance, which the Project satisfies. The Guidelines include design elements such as building orientation to the street, continuous façades along the streetscape, and façades at intersections. The Guidelines also encourage buildings that are consistent in height, scale and massing with other buildings along the street frontage and the frontage across the street. While the Project would be one of the taller buildings in the vicinity, there are multiple three story buildings in the immediate area, particularly near the northeast end of the Project, where the project is only three stories; and the massing of the building will be significantly softened by the setbacks from the street, modulation in the façade, and the mansard-style roof.

(5) Dayton’s Bluff Heritage Preservation District

The Project is partially located within the Dayton’s Bluff Heritage Preservation District (the “District”) and has obtained HPC approvals. As staff notes, the current iteration of the Project had some inconsistencies with regard to the District guidelines; however, these inconsistencies are minor and the HPC approved the Project subject to conditions that will amend certain building materials and design to ensure compliance with the District. HPC staff will continue to review and approve the final materials, details, designs, sizes, profiles, finishes, colors, and specifications for the windows and porch columns.

- b. The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.

The Project will satisfy this finding and has been designed in conjunction with the Mississippi Market development to ensure that the Site design provides ample ingress and egress without increasing congestion or truck traffic on public streets. There will be no parking access to East 7th Street to ensure that traffic on 7th is not disrupted. There will be two curb cuts to the Project along Bates Avenue, both of which are at least 110 feet from the nearest intersection, which exceeds the City’s minimum dimension of 60 feet.

- c. The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.

The Project satisfies this finding and will add to the diversity in building stock of the existing neighborhood. Design elements of the Project are intended to reflect the historic elements of the neighborhood and Dominion will continue to work with HPC staff on selecting materials and finishes that represent the character of the area. The senior housing units will allow current

neighborhood residents to stay in the neighborhood, while bringing new residents to the community. Residents will patronize nearby businesses and will provide active engaged residents. The Project contributes to the health safety and public welfare by activating the long-vacant site.

- d. The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

The Project satisfies this finding and is the second phase of the orderly development of the Site, in conjunction with the Mississippi Market project. The site has long been targeted for redevelopment by City policies and has been designed to be consistent with such policies. The Project will not impede the development of the surrounding properties; rather it will likely encourage additional complementary development in the neighborhood to serve the needs of the new residents.

- e. The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

This finding is satisfied as the Project is a permitted use and is compliant with the applicable zoning district in all aspects, with the exception of the 45 foot height, which is expressly permitted with a CUP. City Code Section 66.331 establishes the 35 foot height requirement in the TN District, but explicitly permits an increase to 45 feet where a CUP is obtained. City Code Sec. 66.331(f). This provision is consistent with the legal standard for review of a CUP, which is a lower threshold than a variance. Therefore, the appellant's statement that granting the CUP "has the effect of rezoning this parcel to a higher intensity zoning district" is wholly incorrect and inconsistent with the zoning code.

### **3. The Proposed Height of the Project was Properly Calculated.**

The Appellants have recently raised questions about the calculation of the Project height. We have reviewed and analyzed the data provided by Dominion and verified that the height provided was properly calculated according to the City Code.

The Project is located on a parcel that has significant elevation changes from east to west due to a slope. The prescribed method for measuring height of a building located on a slope is as follows:

*Building height.* The vertical distance measured from the established grade to the highest point of the roof surface for flat and shed roofs; . . . Where a building is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

City Code Sec. 60.203 (emphasis added). Thus, for the purposes of calculating the building height, the two points that must be ascertained are the "highest point of the roof surface" (the "Highest Point") and the "average ground level of the grade at the building wall" (the "Average Grade"). The Highest Point is determined by the architectural drawings, which is shown as 218 feet. The Average Grade is determined by the data provided by Dominion, attached as "Exhibit A," which is also reproduced on page 4 of the staff report. Dominion provides the elevation of 14 points around the

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perimeter of the building wall (labeled as "Points A-N") and calculated the total distances between the points (the "Building Perimeter"), as well as the average elevation of the segments between each point (the column titled "Average Elevation"). The Average Grade is determined by dividing the weighted mean (the sum of the segment length x average elevations) by the total building perimeter length (963 feet).

The resulting calculation is as follows:

$$\begin{array}{rcl} \text{(Weighted Mean)} / \text{(Building Perimeter)} & = & \text{Average Grade} \\ 167,210.5 / 963 & = & 173.635 \end{array}$$

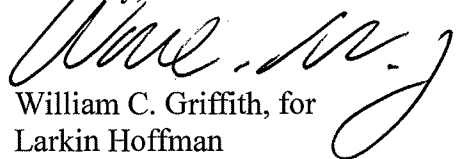
This calculation yields an Average Grade of 173.635 (173.64 rounded). The Highest Point of the building is 218 feet, which results in a Project height of 44.36 feet. Thus, based on the elevation data provided by Dominion, the Project height was properly calculated at 44.36 feet above grade, and permitted with a CUP.

#### Conclusion

Notwithstanding the contentions of Project opponents, Dominion has worked with community, staff, and adjacent property owners to develop a project that not only exceeds the standards established in the zoning code but furthers the public policy. The legal standard for granting approval of the CUP has been met and the required findings under the City Code have been fully satisfied. Moreover, the Project height has been properly calculated pursuant to the City Code and the proposed height is allowed with a CUP. We respectfully request that in light of the above information, and all information in the record of decision, that the City Council uphold the Planning Commission's approval of the Project and deny the Appeal. Please incorporate this letter and the materials to which it refers in the official record of decision in this matter.

Please let me know if you have any questions. Thank you.

Sincerely,



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Enclosure

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cc: Owen Metz, Dominion  
The Honorable Mayor Chris Coleman  
St. Paul City Council Members  
Shari Moore, City Clerk  
Sara Grewing, City Attorney  
Jake Reilly, Senior Planner

4825-5270-1217, v. 2

The proposed project intends to construct one hundred thirteen affordable apartment units for seniors at the southeast corner of East Seventh Street and Bates Street. The building will have four stories of wood framed apartments constructed over a one-story partially interred garage level. Due to grade variations across the site, there will be five stories exposed at the corner of East Seventh Street and Bates Street, four stories exposed at northeast corner of the site, and three stories exposed along the main east-facing façade.

New multi-family construction in Zoning District T-2 is limited to 35 feet in height, and may be extended to 45 feet in height by approval of a Conditional Use Permit in accordance with Table 66.331, footnote (f) of the Zoning Ordinance. Table 66.331 outlines Traditional Neighborhood District Dimensional Standards.

The following spreadsheets, calculation, and associated grading diagram illustrate the average grade plane calculation for the proposed project. The average grade plane is determined to be 173.64, and the highest roof surface is 218.0 which is 44.36 feet above the average grade plane.

Point	Elevation
A	169.1
B	165.5
C	164.9
D	175.84
E	175.56
F	176
G	182.8
H	182
I	179.22
J	176
K	176
L	175.5
M	175
N	173.1

Segment	Segment Length (ft)	Average Elevation	Length x Average Elevation
AB	65	167.3	10874.5
BC	97	165.2	16024.4
CD	178	170.37	30325.86
DE	41	175.7	7203.7
EF	28	175.78	4921.84
FG	16	179.4	2870.4
GH	74	182.4	13497.6
HI	36	180.61	6501.96
IJ	70	177.61	12432.7
JK	78	176	13728
KL	124	175.75	21793
LM	76	175.25	13319
MN	10	174.05	1740.5
NA	70	171.1	11977

Building Perimeter: 963  
 Weighted Mean: 167210.5

Grade Plane = Building Perimeter / Weighted Mean Elevation  
 Grade Plane = 173.635

Grade Plane + 45 feet = 218.635 (Allowable by CUP)  
 Roof Elevation = 176 + 42 = 218 (complies with CUP reqmnts)