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March 26, 2019

Mayor and City Council
City of Saint Paul
310 City Hall
15 Kellogg Boulevard West
Saint Paul, MN 55102

VIA E-MAIL (Contact-Council@ci.stpaul.mn.us)
AND U.S. MAIL

Re: **Reza Inc. Application for Rezoning**
Our File No.: 2479-00001

Dear Mayor and Councilmembers:

Please be advised this office has been retained to represent Gary Huffman, owner of property at 750 Grand Avenue, St. Paul on his objection to the proposed rezoning of neighboring property located at 770 Grand Avenue. It is our understanding that Reza Inc., has applied for a rezoning of property at 770 Grand Avenue from BC to T2 for the purpose of operating a waffle restaurant. Under separate cover, Mr. Huffman and surrounding property owners have sent the Council correspondence expressing their objections and concerns.

We believe this proposed zoning change is inconsistent with the Comprehensive Plan, specifically Section G4 which provides at section G4 that for Grand Avenue the intent is to “Retain BC (commercial uses in residential structures) and residential zoning on Grand Avenue. Discourage rezoning of residential uses on Grand Avenue to more intensive uses”. Pursuant to Minn. Stat. § 473.858, Subd. 1, where there is a conflict between the Comprehensive Plan and the Zoning Code, the Comprehensive Plan controls. Specifically the Statute provides, “If the Comprehensive Municipal Plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the Plan by local government units in conjunction with the review and, if necessary, amendment of its Comprehensive Plan ... a local government unit shall not adopt any fiscal device or official control which is in conflict with its Comprehensive Plan, . . . ”*Id. (emphasis added)*. While we understand the current Comprehensive Plan was adopted 13 years ago, that Comprehensive Plan is still in effect and controls until otherwise amended.

We also believe that the proposed rezoning may be a violation of the Fifth Amendment or spot zoning pursuant to Alexander v. City of Minneapolis, 125 N.W.2d 583 (Minn. 1963). There the Minnesota Supreme Court found where the reasonable market value of the subject property

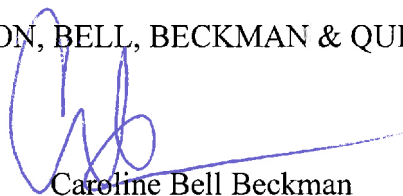
decreased by \$35,000.00 there was a substantial diminution in value of the property such that it was a taking without just compensation. We believe that the proposed rezoning will result in substantial diminution of surrounding properties including Mr. Huffman's property should the property be developed under T2 zoning. The T2 zoning raises aesthetic concerns for the surrounding properties in that there would be allowed a -0- foot setback to the sidewalk as opposed to the neighboring properties which have a 25-foot sidewalk setback. This would adversely impact surrounding properties and cause aesthetic inconsistencies in the setbacks of surrounding properties.

This current proposal is premature because the Grand Avenue Task Force has not yet convened. We, therefore, ask that you deny the request at this time until the Task Force study is complete and consider adopting a moratorium pursuant to Minn. Stat. § 462.355 Subd. 4(a) on any zoning changes on Grand Avenue pending the Task Force study. Pursuant to Pawn America v. City of St. Louis Park, Minnesota, 787N.W. 2d 565 (Mn. 2010) the City can adopt a moratorium even when an application is pending to protect the planning process and for the public health, safety and welfare of the city's citizens. The city currently has a task force appointed and it would be appropriate to adopt a moratorium for any zoning changes to Grand Avenue pending this study and review.

To be clear Mr. Huffman is not opposed to the proposed use by the Waffle Bar but believes that can be accommodated by other zoning amendments that are more consistent with the surrounding neighborhood. Thank you for your consideration.

Very truly yours,

ERICKSON, BELL, BECKMAN & QUINN, P.A.



Caroline Bell Beckman

/dj

c: Kady Dadlez, Senior City Planner (kady.dadlez@ci.stpaul.mn.us)
Gary Huffman