

July 21, 2025

MICHAEL J. KAUPA
mkaupa@anthonyostlund.com
D (612) 492-8210

Via Email

St. Paul City Council
CouncilHearing@ci.stpaul.mn.us

Re: Proposed Rezoning of 694 Minnehaha Ave E

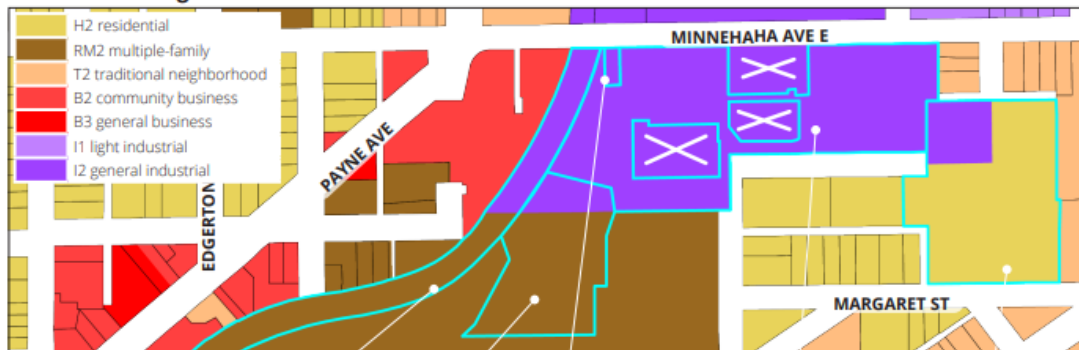
Dear Council Members:

This firm represents Clapp Investments, LLC, 688 Minnehaha Management, LLC, 700Fish LLC, and 704 Minnehaha, LLC (the “Property Owners”), that each own property located at the former Theodore Hamm Brewing Company site (the “Hamm’s Site”). My clients object to the Hamm’s Brewery Rezoning application (“Application”) because it constitutes *unlawful* spot zoning, violates the City’s Legislative Code, and opens the door for a development project that will devastate my clients’ businesses and dramatically reshape this historic industrial district in a way that does not serve the needs of the City or the surrounding community. For these reasons, we urge you to deny the Application.

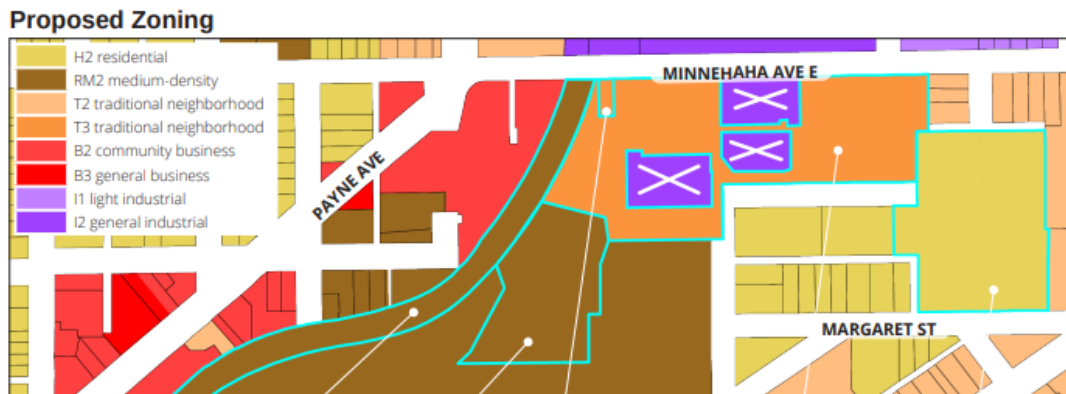
I. The Application is illegal spot zoning

The Hamm’s Site is part of a large, contiguous area that is currently zoned I2, a general industrial designation. The map below shows how the Hamm’s Site is currently zoned:

Current Zoning



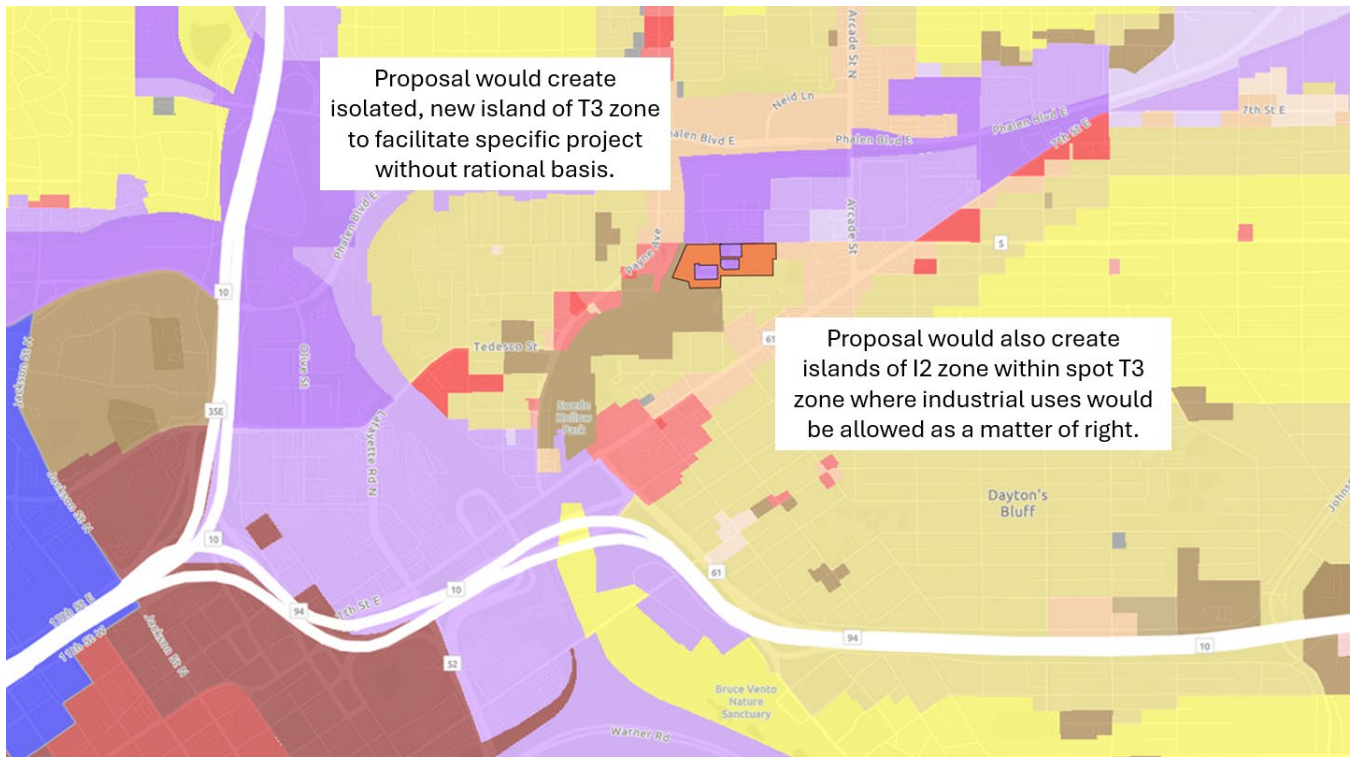
The proposed zoning is depicted in the below map, which was included with the staff report on this Application.



As shown in the proposed zoning map, my clients' properties at 688, 700 and 704 Minnehaha Avenue East would become islands of I2 zoning within a new T3 zone. In other words, instead of being a continuous I2 zone, as is the case now, portions of the Hamm's Site would be rezoned to include *four* different zoning classifications: H2, T3, RM2 and I2. The reason you are being asked to approve this change is to facilitate a single, private development at the Hamm's Site that would add uses that would otherwise not be allowed within an I2 zone, but which could be constructed in many other places throughout St. Paul.

This is unlawful spot zoning. As explained by the Minnesota Supreme Court, spot zoning occurs when zoning changes "establish a use classification inconsistent with surrounding uses and create an island of nonconforming use within a larger zoned district, and which dramatically reduce the value of uses specified in the zoning ordinance of either the rezoned plot or abutting property." *Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W. 885, 891 (Minn. 1978). Under this Application, that would happen in two distinct ways. First, the proposed new T3 zone is being dropped into the Hamm's Site in isolation from any other T3-zoned parcel. Second, the proposed new T3 zone will leave three separate I2-zoned parcels (my clients' properties), which will exist in the middle of this new proposed T3 zone. Consider the City's own zoning map below, which zooms out to show the surrounding area:¹

¹ The City's zoning map is available at:
<https://stpaul.maps.arcgis.com/apps/instant/sidebar/index.html?appid=47ffa61b84c4d979626c51eb5ef091c>



As the City's zoning map illustrates, the proposed new T3 zone is isolated from any neighboring T3-zoned parcel, which creates an island of T3 zoning. Within that new island of T3 zoning would be separate islands of I2-zoned land, owned by my clients, which appear on the map as distinct purple spots within the orange T3 zone. These islands of I2-zoned land, with easements that permit the use of common driveways to access the properties, will exist alongside and in a real sense *within* the proposed new T3-zoned parcels.

This kind of gerrymandered proposal illustrates why spot zoning is unlawful. The proposed rezoning would effectively authorize a new kind of hybrid zoning where uses that the City has previously concluded are incompatible could exist within the same site. For example, uses permitted in I2 zones like gun shops, shooting galleries, pawn shops, auto repair, and warehousing and storage would overlap with residential housing targeted specifically to families with young children without the need to seek variances for those uses. Changes to allow specific uses of property where they are otherwise prohibited should be dealt with under the more stringent standards for seeking a variance, rather than by changing the City's zoning on a parcel-by-parcel level to benefit specific projects, as is the case here.

The Planning Commission has appropriately raised these concerns. At its meeting on May 30, the Commission voted on the Application as three separate motions: (1) rezoning parcel 5 to H2, (2)

rezoning parcels 1 and 2 to RM2; and (3) rezoning parcels 3 and 4 to T3.² The map below, which was included in the Staff Report, shows the location of each parcel.



The Commission voted in favor of rezoning parcels 1, 2, and 5, but voted 9-2 against changing parcels 3 and 4 from an I2 to a T3 zone. Multiple Commissioners recognized that leaving the Property Owners' land as isolated I2 zones within a new T3 zone was clear spot zoning. After reviewing the proposed zoning map, Commissioner Holst stated, "if this doesn't look like spot zoning, I don't know what does." Commissioner Taghioff agreed, noting that "stick[ing] I2 in the middle of T3" is "not something that we would ever rationally do."

The Commissioners were also unpersuaded by the Staff's argument that the proposal would not affect the current Property Owners because breweries and distilleries can operate within T3 zones. As Commissioner Taghioff correctly noted, this argument ignores the fact that leaving my clients' properties surrounded by a larger T3 zone meant for a residential development will "make it obviously harder to sell in the market that way, and vice versa." This change, as Commissioner Taghioff observed, could have a "negative effect on land value, both for the three parcels which would remain I2 zoned and for the surrounding T3 parcels." Minnesota courts have long held that zoning changes are unlawful when they dramatically reduce the market value of the rezoned plot, which is precisely what would happen here. *See City of Rochester*, 268 N.W.2d at 891.

II. The proposal is inconsistent with the purpose of T3 zoning under the City's Legislative Code

In addition to being *unlawful* spot zoning, the proposed rezoning does not fit within other aspects the City's planning. T3 zoning is intended for larger, systemic mixed-use developments. That purpose is described in Section 66.314 of the City's Legislative Code, which explains that the "T3 traditional

² Like the Planning Commission, my clients only object to the rezoning of parcels 3 and 4. They have no objection to the rezoning of parcels 1, 2, and 5.

neighborhood district provides for higher-density pedestrian- and transit-oriented mixed-use development” and is designed for development or redevelopment on large sites that can accommodate a “system of interconnected streets and paths that offer multiple routes for motorists, pedestrians and bicyclists, and are connected to existing and future streets” along with a wide mix of uses and housing styles.

Put simply, this does not describe the Hamm’s Site. The proposed new T3 district is a comparatively small district that is likely to have few, if any, of these features for which the T3 designation is intended as opposed to the systemic development of larger mixed-use neighborhoods that the T3 designation is for. When the T3 zoning classification is used in smaller sites like the Hamm’s Site, Section 66.314 explains that it is intended “an existing mixed-use neighborhood center where some of the above elements already exist . . . [and] the intent is that all would be present within a reasonable walking distance.”

That is not what the Hamm’s Site currently is. The Hamm’s Site is not pedestrian- or transit-oriented, and the east end of the Site is not a mixed-use development. Instead, there is a proposal to split the 694 Minnehaha Avenue East lot and to designate half of that lot to be part of a new historic district. But the new structure that would go up on the lot would not be connected to the broader Hamm’s Site, because it would be intentionally outside the bounds of the proposed historic site and thus set apart. Contrary to the type of coherent development that is intended by T3 zoning, the proposed new structure would stand on its own, apart from the existing businesses and surrounding properties.

In short, the proposal to rezone portions of the Hamm’s Site as T3 is simply inconsistent with the purpose and characteristics of T3 zoning, a problem raised by multiple members of the Planning Commission. The City Council should not approve a change in zoning that is inconsistent with even the stated intent of the proposed new zoning classification.

III. The proposed rezoning and development plan will have devastating effects on existing businesses

As noted, the rezoning proposal was submitted to facilitate a new development plan that will add, among other things, a new multi-family residential building, which would replace a substantial portion of the existing shared parking lot on the eastern side of the Hamm’s Site, which the Housing and Redevelopment Authority (“HRA”) has for years held out as a shared parking amenity for all businesses located on the site and their guests. For example, a staff report to the HRA Board dated October 23, 2013, outlined HRA’s retention of streets and parking at the Hamm’s Site as follows:

On December 26, 2012, by Resolution 12-378, the HRA Board approved the conveyance of one of the buildings to Urban Organics, LLC for an aquaponics business.

PED staff is working with other prospective business developers to purchase two additional buildings on the Hamm’s site. To coordinate the installation of utilities

and provide access for ingress, egress, and parking for all the buildings, the streets and parking lot will remain under the ownership of the HRA.

By resolution on October 23, 2013, the HRA voted 6-0 to approve this strategy. *See* RES 13-1667.

For years following that resolution, HRA consistently maintained that the surface lot was a shared amenity that would be available to all businesses and their guests. In 2015, St. Paul's Deputy Mayor wrote "The parking lot is, and will remain, owned by the HRA department indefinitely." Likewise, a June 2021 staff report stated that HRA "has maintained an existing shared public parking facility" at this location.

Our clients relied on and have consistently used this shared parking amenity while investing millions of dollars into revitalizing the Hamm's Site and turning it into the thriving commercial and community space it is today. But the proposed redevelopment, which these zoning changes are intended to aid, would abandon those promises in favor of building new construction that would jeopardize the survival of the existing businesses.

In particular, changes to the shared parking amenity would have devastating effects on the existing businesses at the Hamm's Site. Not only would the proposed redevelopment plan *eliminate* the majority of the public, shared surface lot on the eastern side of the Hamm's Site, the addition of a substantial residential structure, as well as the proposed market and additional housing units on the western side of the Site, will create significant *new and unmet* parking demands. The increased parking demands from these proposed developments would exceed current parking availability by hundreds of parking spots. Even the City's own parking study shows a substantial deficit of 175 parking spots compared to what would be needed in necessary parking at the site. Our clients' separate study suggests that the shortfall will actually be closer to 600 parking spaces.

Simply put, use of the parking amenity is fundamental to my clients' properties, and their businesses could not operate without it. A vote in favor of this Application is a vote in favor of a single developer over the property rights of existing Property Owners who have invested years and millions of dollars turning the Hamm's Site into a vibrant destination and cherished community resource.

IV. The proposed rezoning is unnecessary and untimely

In addition to being *unlawful* spot zoning, the proposed zoning changes are unnecessary and untimely. This Application was submitted without considering alternatives to the proposed changes or engaging my clients in any meaningful way. Indeed, multiple members of the Planning Commission urged the City to work cooperatively with the Property Owners to come up with alternative solutions for the Hamm's Site before fundamentally altering the zoning scheme of the entire site. My clients support those suggestions and remain eager to work with the City to discuss alternative approaches to developing this unique site that would be consistent with their property rights and the needs of the community. No one is more committed to the long-term success of the Hamm's Site than my clients. All

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they ask is that the City work *with* them, not *against* them, to ensure that this unique place in St. Paul's history is a vibrant destination for years to come.

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My clients respectfully object and request that the proposed zoning changes, which are inconsistent with the City's Legislative Code and constitute ***unlawful*** spot zoning, be denied.

Respectfully,

ANTHONY OSTLUND LOUWAGIE
DRESSEN & BOYLAN P.A.

/s/ Michael Kaupa

MICHAEL J. KAUPA