

April 8, 2011

Anne Hunt  
Mayor's Office  
390 City Hall  
Saint Paul, MN 55102

Re: Cossetta's Alimentari Sustainability Initiatives

Dear Ms. Hunt:

On behalf of Dave Cossetta and his new Alimentari project, we are requesting a waiver to your Sustainability Policy for projects receiving more than \$200,000. Our entire design team believes that we will meet a substantial amount of Sustainability efforts and criteria that matches many of your policy options defined in LEED, B3 or others. With this said, we believe that any one of these options (LEED, B3 or others) do not properly apply to the building type because there is not a good benchmark for a restaurant / bakery / grocery with respect to energy-consumption goals which drive much of the sustainability certification processes and because we have a mix of new and existing buildings. The achievement of any green certification requirements is considered too great an uncertainty. That being said, we recognize the importance of sustainability and we want to make every effort to comply with the Sustainability goals where possible, regardless of certification. To that end, we are currently pursuing agreement with The Weidt Group to develop any appropriate energy-saving measures that we have overlooked in the process thus far.

We welcome the opportunity to meet with your staff to review the plans and evaluate what else can be done. Please advise what times next week may be available to begin those meetings.

As a way of introduction, our firm ESG is one of the oldest firms in Minneapolis committed to sustainable design practices. High performance sustainably designed buildings save our clients money in long term operations and maintenance fees, while also creating healthy indoor environments which reduce the number of employee sick days. Since the Walker Library back in the late 70's, ESG has been working with each client to incorporate sustainable strategies to best fit their goals. Producing sustainable design is good business practice and partly why we have so many repeat clients. Cossetta's Alimentari will be no exception.

Please see separate attached letters from McGough Construction and Dunham Mechanical and Electrical Engineering detailing their respective efforts towards a sustainable building.

The following architectural strategies will the minimal goals we have for this project:

#### **Site – Definite**

- Construction Activity Pollution Prevention: ESG's specification will include language requiring that State and Federal SWPP and NPDES standards are met throughout construction.
- Site Selection: We are developing on previously developed land, not prime farmland, wetland, or prime species habitat
- Development Density & Community Connectivity: Site has been previously developed and is within ½ mile of residential zone and at least 10 basic services.
- Public Transportation Access: Project is located within ¼ mile of two public bus line stops.
- Bicycle Storage & Changing Rooms: Bike parking is located on-site and a shower is provided for staff use.
- Stormwater Design, Quantity Control: Design & construction teams will implement stormwater management best practices.

#### **Site – Possible**

- Low-Emitting & Fuel Efficient Vehicles – Preferred parking will be provided for low-emitting and fuel-efficient vehicles for 5% of total parking capacity of the site.
- Parking Capacity: Parking has been sized to meet, but not exceed local zoning requirements, and preferred parking is provided for carpools/vanpools for 5% of total parking capacity of the site.
- Heat Island Control, Non-roof: 50% of hardscape to have SRI of at least 29 or be shaded within 5 yrs of occupancy

#### **Water Efficiency – Definite**

- Water Use Reduction: The design and construction teams will work together to source fixtures that will conserve water while meeting functionality requirements of a restaurant setting.

#### **Water Efficiency – Possible**

- Water Efficient Landscaping: Use no potable water for irrigation or provide no irrigation.

#### **Energy & Atmosphere – Definite**

- Fundamental Refrigerant Management: Zero use of CFC-based refrigerants in HVAC&R systems.
- Optimize Energy Performance: The following strategies are being employed:
  - Heat gain through glazing will be mitigated with shading strategies and high performance glazing.
  - Light Fixtures will be specified to be fluorescent.
  - The building envelope will be designed & detailed using best practices for our Minnesota climate.
  - See separate attached letter from Dunham Mechanical and Electrical Engineering for further optimal energy performance strategies.

### **Energy & Atmosphere– Possible**

- Fundamental Commissioning of Building Energy Systems: Provide a Commissioning Authority to develop and incorporate commissioning requirements into the Construction Documents.
- Minimum Energy Performance: Design Project to meet ASHRAE/IESNA 90.1 – 2004.
- Enhanced Refrigerant Management: Select Refrigerants and HVAC&R that minimize/eliminate the emission of compounds that contribute to ozone depletion and global warming.
- Measurement & Verification: Install the necessary metering equipment to measure energy use and evaluate efficiency for no less than one year of post-construction occupancy.
- Green Power: Provide at least 35% of buildings electricity from renewable sources with at least a 2 yr energy contract.

### **Materials & Resources – Definite**

- Storage & Collection of Recyclables: Easily accessible recycling of paper, cardboard, glass, plastics and metals at a minimum.
- Building Reuse: We will maintain 75% of existing walls, floors & roof.
- Construction Waste Management: ESG's specifications will contain language requiring the contractor to divert between 75-90% of construction waste from the landfill.
- Recycled Content: All structural steel, tin ceilings, and finishes wherever possible will have at least 10% recycled content.

### **Materials & Resources – Possible**

- Regional Materials: Select materials based on having been extracted, harvested or recovered, as well as manufactured within 500 miles of project site.
- Rapidly Renewable Materials: Select materials/products made from plants that are harvested within a 10 yr cycle or shorter.
- Certified Wood: For any wood-based materials, provide Forest Stewardship Council certified wood.

### **Indoor Environmental Quality – Definite**

- Minimum IAQ Performance: Project will meet the minimum requirements of sections 4 thru 7 of ASHRAE 62.1-2004.
- Environmental Tobacco Smoke: Smoking will be prohibited in the building.
- Construction IAQ Management Plan: ESG's specifications will contain language requiring compliance with the Control Measures established by the Sheet Metal and Air Conditioning National Contractors Association (SMACNA).
- Low-Emitting materials: ESG specifications will contain language requiring low VOC limits for adhesives, sealants, paints, coatings, flooring systems, composite wood & agrifiber products.
- Indoor Chemical & Pollutant Source Control: Project will employ permanent entryway systems to capture dirt and particulates from entering the building at all entryways directly connected to the outdoors. Janitor's closets will be ventilated.

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- Controllability of Systems, Lighting: Systems will allow for lighting control to enable adjustments to meet group needs. The extensive glazing on the project will be protected from glare. Light shelves will bring natural light deep into the first floor areas.

#### **Indoor Environmental Quality – Possible**

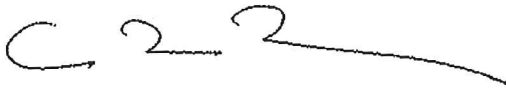
- Controllability of Systems, Thermal Comfort: Project will provide individual comfort controls for 50% (min) of building occupants. Operable windows contribute towards this control.
- Thermal Comfort, Design: Design HVAC & building envelope to meet AHRAE Standard 55-2004.
- Thermal Comfort, Verification: Implement a thermal comfort survey of building occupants within 6-18 months after occupancy. Develop a corrective plan if more than 20% of occupants are dissatisfied with thermal comfort in the building.

#### **Innovation in Design – Possible**

- Green Cleaning: Provide products, equipment, and paper to comply with green cleaning standards
- Compostable Take-Out & Disposable Containers
- Production of food on-site reduces transportation green house gas emissions
- Use of local/organic food products
- Composting of Waste

Sincerely,

ELNESS SWENSON GRAHAM ARCHITECTS, INC.



Aaron Roseth  
Vice President

cc: Martin Schieckel, Kurt Schultz, Cecile Bedor, Dave Cossetta, Joe Finley, Joe Bagnoli, Dave Cossetta, Tracy Enriquez, Thomas Hannasch, Dale Holland, Jay Rohkohl, David Graham, Art Bartels

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Exhibit J

Sustainability Undertakings

For the

Cossetta's Alimentari Project

1. Comply with the State of Minnesota Sustainable Building Guidelines (B3-MSBG) rating system and be verified in accordance with the verification method specified in B3, subject to applicable variances as may be requested and approved due to physical and financial limitations.
2. Predicted energy use shall meet Minnesota Sustainable Building 2030 (SB2030) "Energy Standards" for new buildings, subject to variances requested and approved for the operation of a commercial kitchen and bakery. The conditions for meeting the "Energy Standards" are subject to the "Cost Effectiveness" Protocol of SB2030.
3. Predicted use of potable water in the building must be at least 30% below EPA Policy Act of 1990, excluding water used in the operation and sanitation of a commercial kitchen.
4. Predicted water use for landscaping must be at least 50% less than a traditionally irrigated site using typical water consumption for underground irrigation systems.
5. Actual solid waste of construction and demolition materials must be at least 75% recycled or otherwise diverted from land fills.
6. Indoor Environmental Quality (IEQ) will be maintained in accordance with B3 guidelines, subject to applicable variances requested and approved.
7. Storm Water Management Requirements:
  - (a) Site Eligibility: Sites with one quarter (1/4) acre or more of total land disturbance;
  - (b) Rate Control: 1.64 cubic feet per second (cfs)/ acres disturbed, or such other rate as is approved in the site plan approval process;
  - (c) Water Quality Management: For a two year, 24-hour rainfall event, Building Owner will use good faith efforts to achieve a goal to provide treatment systems designed to remove 80% of the average annual post development Total Suspended Solids (TSS) and remove 60% of the average annual post development Total Phosphorus (TP), or such other percentage as is approved in the site plan approval process, by implementing Best Management Practices (BMPs) outlined in "Urban Small Sites Best Management Practices" handbook (Metropolitan

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Council), "Protecting Water Quality in Urban Areas" handbook (Minnesota Pollution Control Agency), and "Minnesota Storm Water Manual" (Minnesota Pollution Control Agency). All BMP treatment systems for subject site need to include safety factors, maintenance and a back-up plan in case of failure. All manufactured devices require independent laboratory testing to confirm product claims.

- (d) Volume Control/Infiltration: The Project will maintain or increase infiltration rates from pre-project site conditions;
  - (e) Operation and Maintenance: All practices must have a O and M plan.
8. Building owner gives permission for authorized MSBG-B3 personnel or authorized Saint Paul City staff to access the estimated greenhouse gas emissions and records as determined by the utility, Xcel Energy.
  9. Building owner gives permission for authorized MSBG-B3 personnel or authorized Saint Paul City staff to access the actual energy data and records for the building's utilities as available from the utility, Xcel Energy.
  10. Utilize the Energy Design Assistance program as provided by Xcel Energy and The Weidt Group.
  11. Building owner will continue to utilize the services of LEED Accredited Professionals as available from the owner's engineering, design and construction partners.

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Board of Zoning Appeals

Note to File

Regarding: Supplemental Materials for Variance Application for Property Located at  
211 West Seventh Street, Saint Paul

Above-mentioned materials were submitted on behalf of applicant to Department of Safety and Inspections. Materials were received May 4, 2012. Supplemental information was not requested from the applicant by DSI. Staff report was already in progress for the variance application.

Supplemental materials were not incorporated into the staff report in order to maintain conformance with the established Board of Zoning Appeals schedule for this application.

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STREET  
AND  
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RECEIVED IN D.S.I.

MAY - 4 2012

150 SOUTH FIFTH STREET SUITE 2300  
MINNEAPOLIS, MINNESOTA 55402  
612-335-1500 MAIN  
612-335-1657 FAX

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ERIC H. GALATZ  
612-335-1509 DIRECT  
ERIC.GALATZ@LEONARD.COM

May 4, 2012

Zoning Administration  
Department of Safety and Inspections (DSI)  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101

**Re: Supplemental Materials for Variance Application for Property Located at 211 West Seventh Street, Saint Paul**

To the Board of Zoning Appeals:

Please accept this letter on behalf of David Cossetta, Cossetta's, Inc. and Bocce, LLC (collectively, the "**Petitioner**") as supplemental support for Petitioner's Application for Zoning Variance (the "**Application**"). The Petitioner seeks a variance from stormwater detention requirements that, as interpreted and enforced by the Department of Public Works, would create hazardous conditions and constitute an unjustifiable waste of resources.

**1. The approved underground stormwater storage system is not appropriate for the site conditions the Petitioner uncovered since construction started in July 2011.**

As Petitioner and its engineers and contractors learn more about the site in the course of construction, they are more concerned about the proposed underground stormwater storage system creating hazardous conditions. (See attached correspondence from Daniel M. Vruno, P.E. and John A. Krausert, P.E., P.L.S.). Specifically, excavation for the restaurant addition uncovered or confirmed the following:

- Excavation confirmed pre-construction soil borings: limestone bedrock is within three feet or less from grade over much of the site. See figures 1 and 2.
- In the course of excavating the basement of the addition, Petitioner encountered lead and petroleum contaminated soils, which required a \$250,000 cleanup under the Minnesota Pollution Control Agency Voluntary Investigation and Cleanup Program.
- In order to install the proposed underground stormwater Storage System, consisting of 4-foot diameter pipes that will hold up to 7940 cubic feet (about 60,000 gallons) of water, Petitioner will have to excavate an area of at least 4,000 square feet to a depth of about

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8.00 feet, requiring Petitioner to break up and haul away up to 10,000 cubic feet of bedrock (our civil engineer estimates between 8,500 and 10,000 cubic feet).

- Figure 3 shows the best case condition: fissured limestone bedrock against the new poured concrete foundation of the addition. The worst case is along the existing limestone foundation wall of the historic structure, where porous stone wall meets fissured limestone bedrock. Figures 4 and 5 show the interior condition of the existing porous limestone foundation wall.

These conditions present the following hazards:

- Breaking and hauling up to 10,000 cubic feet of rock (and the soil and asphalt above the rock) is likely to increase the size and extent of fissures in the remaining bedrock, creating paths for water infiltration into and through the existing limestone foundations of the existing Cossetta's building and adjacent buildings.
- Breaking and hauling up to 10,000 cubic feet of rock will have short term adverse environmental impacts, including energy consumption, noise and air pollution, traffic disruption, and excessive wear and tear on local streets associated with heavy trucks and equipment.
- Breaking and hauling up to 10,000 cubic feet of rock may have longer term adverse environmental impacts, including disturbing contaminated soils that are otherwise capped by an asphalt parking lot, and spreading the contamination by moving contaminated soils around on the site, hauling contaminated soils off site, and creating or expanding fissures in the un-excavated bedrock through which waterborne contamination can travel.
- Installing a 60,000 gallon cistern adjacent to Petitioner's porous limestone walls, 6.00 to 7.00 feet above the floor of Petitioner's food preparation and storage areas, dramatically increases the risk of water infiltration, flooding and mold growth in those areas. See figures 6 and 7.
- Underground storage of runoff could itself create unsafe conditions through the accumulation of sediments that may produce noxious gases.

**2. The proposed underground stormwater storage system is inconsistent with standards incorporated in St. Paul Code Section 63.319 - Stormwater Runoff.**

Section 63.319 - Stormwater Runoff, requires parking lot design "in accordance with best management practices to comply with required local and regional water quality, volume, and rate control standards. These standards include but are not limited to chapter 52, stormwater runoff." Chapter 52 requires design in accordance with "best management practices":

*Best management practices (BMPs) mean the erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies. Individual BMPs are described in the current version of "Protecting Water Quality in Urban Areas," Minnesota Pollution Control Agency 2000. BMPs must be adapted to the site and can be adopted from other sources. However, they must be similar in purpose and as effective and stringent as the MPCA's BMPs. Other sources include the current versions of "Minnesota Small Sites Urban BMP Manual", Metropolitan Council Environmental Services 2001, and "Erosion Control Design Manual", Minnesota Department of Transportation, 1993.*

**The proposed underground stormwater storage system is not consistent with best management practices.** As a threshold matter, a system that requires breaking and hauling up to 10,000 cubic feet of rock, disturbing potentially contaminated soils, and installing a 60,000 gallon cistern adjacent to and above the floor level of occupied space cannot possibly be "effective and practicable" under any standard.

With respect to the specific standards incorporated in the Code of Ordinances:

- **"Protecting Water Quality in Urban Areas," Minnesota Pollution Control Agency 2000**  
Section 2.10 adopts a "first do no harm" strategy by establishing the following priorities:

#### **PRIORITIES**

*Address the appropriate BMPs by priority:*

- 1. Avoid adverse impacts.*
- 2. Minimize unavoidable adverse impacts.*
- 3. Mitigate unavoidable adverse impacts.*

Petitioner is starting with a project that will not increase impervious surfaces on the site above pre-construction conditions. The site is an existing, fully developed urban site. If Petitioner did nothing at all there would be no adverse impact at all. In order to introduce a modest improvement to current conditions, the City proposes to require Petitioner to produce huge short term adverse impacts in energy consumption, noise pollution, heavy truck traffic, and spreading of potential contaminated materials and longer term adverse impacts in damaging existing foundations and creating a hazardous condition by installing a 60,000 gallon cistern above inhabited space used for food preparation and storage.

- **"Protecting Water Quality in Urban Areas," Minnesota Pollution Control Agency 2000**  
Section 2.10 requires implementation of BMP options that are suitable for the specific site and project:

**Physical Site Suitability**

*BMPs should only be used in areas where the physical site characteristics are suitable. Some of the important physical site characteristics are soil type, watershed area, water table, depth to bedrock, site size and topography. If these conditions are not suitable, a BMP can lose effectiveness, require excessive maintenance or stop working after a short while. . . . The physical site conditions must be examined for each practice.*

Petitioner's site is patently not suitable for the proposed solution. The system cannot be installed without (i) removing huge quantities of bedrock at substantial cost to the Petitioner and the environment, and (ii) dramatically increasing the risk of water infiltration into the food preparation area.

- **"Protecting Water Quality in Urban Areas," Minnesota Pollution Control Agency 2000**  
Section 2.10 requires implementation of BMP options that are cost effective:

**Cost Effectiveness**

*. . . . Economics is an important consideration in the selection of BMPs that will achieve the water-quality goal at the least cost. This should be considered when selecting BMPs and deciding how they will be implemented. To properly compare alternatives, all costs for the design life of a BMP should be included. These include expected maintenance costs as well as the initial costs for land, engineering and construction. To create a true economic picture of a BMP, benefits other than water quality and flood prevention should also be considered.*

The proposed underground stormwater storage system will cost about \$250,000 to install. The department of public work's requirements for the system, including quarterly inspections, quarterly clean out of the system, and addition clean-out after each large storm event, will impose significant costs into the future. Although the MPCA standards do not provide a specific measure of cost-effectiveness, the Capitol Region Watershed District sets such a standard by proxy: it allows developers to contribute \$40,000 per acre disturbed to regional improvements in lieu of constructing on-site improvements. The underground stormwater storage system will cost more than six (6) times that amount, with less than one acre disturbed.

- **Urban Small Sites Best Management Practice Manual, Metropolitan Council Environmental Services 2001.** Identifies systems that store and treat stormwater, like the proposed underground stormwater storage system, as "oversized pipes" designed to hold water for short periods of time, to slow the rate of discharge from the site.

- **Urban Small Sites Best Management Practice Manual, Metropolitan Council Environmental Services 2001.** Identifies the following limitations:

**Limitations**

- *Provides little or no water quality treatment to runoff.*
- *High material costs relative to traditional surface storage facilities.*
- *Must be located in areas where the pipes can be easily accessed for maintenance.*

Two Hundred and Fifty Thousand Dollars (\$250,000) is a very “high material cost” for “little or no water quality treatment . . . “ The “traditional surface storage facilities” for an urban parking lot is usually the parking lot itself. Curbs and grading allow heavy rainfall to collect in the parking lot before draining into catch basin and the city storm sewers. Petitioner’s site slopes in a manner that makes holding water on site infeasible without an underground stormwater storage system.

- **Capitol Region Watershed District Rules.** Although the Code does not expressly refer to the Capitol Region Watershed District Rules, the CRWD Rules are the most relevant set of standards because the CRWD Rules would apply if the Petitioner’s project disturbed one acre or more. The CRWD Rules would not require Petitioner to install a costly, hazardous, and possibly ineffective underground stormwater storage system.
- **Capitol Region Watershed District Rules.** Rule C 3. Criteria, (b) RUNOFF RATE, would probably not require the Petitioner to do anything about runoff rates:

*Runoff rates for the proposed activity shall not exceed existing runoff rates for the 2-year, 10-year, and 100 year critical storm events, and runoff rates may be restricted to less than the existing rates when the capacity of downstream conveyances systems is limited.*

Petitioner’s project will not increase the total impervious surface of the property, or otherwise affect runoff rates. Absent a determination that the storm sewer system has insufficient capacity for existing runoff, the CRWD would not require Petitioner to install the underground stormwater storage system, or do anything else, to control runoff rate.

Instead of regulating runoff rate, CRWD regulates runoff volume. If the CRWD was regulating Petitioner’s site on the basis of volume, the CRWD almost certainly would not require Petitioner to implement runoff volume controls that would require Petitioner to excavate its site. CRWD Rules recognize that site conditions may render runoff volume control infeasible, and provides for Alternate Compliance.

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- **Capitol Region Watershed District Rules.** Rule C 3. Criteria, (c) RUNOFF VOLUME, (1) recognizes that site conditions may not be suitable for any stormwater detention or retention, and therefore provide for Alternative Compliance:

*(viii) Specific site conditions may make infiltration difficult, undesirable, or impossible. Some of these conditions are listed in Table 2 and may qualify the applicant for Alternative Compliance Sequencing. The applicant may also submit a request to the District for Alternative Compliance Sequencing for site conditions not listed below. All requests shall indicate the specific site conditions present and a grading plan, utility plan, and the submittal requirement listed in Table 2.*

- **Capitol Region Watershed District Rules.** Rule C 3. TABLE 2--Alternative Compliance Site Conditions specifically recognizes “bedrock within 3 vertical feet of bottom of infiltration area” as a physical condition warranting alternative compliance:

TABLE 2--Alternative Compliance Site Conditions*		
Type	Specific Site Conditions	Submittal Requirements
Potential Contamination	Potential Stormwater Hotspots (PSHs)	PSH locations and flow paths
	Contaminated Soils	State Permitted Brownfield Documentation, Soil Borings
Physical Limitations	Low Permeability (Type D Soils)	Soil Borings
	Bedrock within 3 vertical feet of bottom of infiltration area	Soil Borings
	Seasonal High Groundwater within 3 vertical feet of bottom of infiltration area	Soil Borings
	Karst Areas	Soil Borings
Land Use Limitations	Utility Locations	Site Map
	Adjacent Wells	Well Locations

\* Alternative Compliance is allowed for the volume reduction portion of Rule C only.

- **Capitol Region Watershed District Rules.** Rule C 3. Criteria, (c) RUNOFF VOLUME, (2) (ii) Alternative Compliance Sequencing, provides for compliance on another site:

☐ *Volume reduction may be accomplished at another site outside of the project area or through the use of banked credits as long as it yields the same volume reduction benefit, and is approved by the District. . . .*

Because the Petitioner's site is too small to be subject to the CRWD Rules, Petitioner has not been offered an opportunity to provide alternative performance. If given that opportunity, Petitioner owns a site within a few blocks of the project site, downstream, at 226 Ryan Avenue. That property is a 50.00 feet x 100.0 feet vacant lot, adjacent to residential properties, that would be an ideal site for a rain garden.

- **Capitol Region Watershed District Rules.** Rule C 3. Criteria, (c) RUNOFF VOLUME, (2) (iii) Alternative Compliance Sequencing, provides for payments in lieu of compliance:

*(iii) Third, as a last alternative, for the remaining volume reduction required, the applicant shall pay into the District's Stormwater Impact Fund to cover the cost of implementing equivalent CRWD RULES 11/03/2010 17 volume reduction elsewhere in the watershed. The required amount to contribute to the Stormwater Impact Fund will be set by the Board annually.*

According to the latest available Capitol Region Watershed District Volume Control Worksheet, "The contribution amount is \$40,000 per acre of impervious surfaces on a project site." The CRWD requires a developer to do what it reasonably can do on the development site, then on an alternative site, and only then will allow a developer to make a payment in lieu of providing the required volume reduction. Clearly, the CRWD would not make Petitioner spend \$250,000 for an underground water storage system when the CRWD is willing to accept \$40,000 as a payment in lieu. In light of the fact that Petitioner's site is too small to be subject to the CRWD Rules in the first place, it is absurd, unfair, and wasteful to require Petitioner to spend \$250,000 on a solution the CRWD Rules would not require.

**3. Petitioner's project should not be subject to Section 63.319 at all.**

Section 63.319 applies only to "areas of off-street parking facilities of greater than one-quarter ( $\frac{1}{4}$ ) of an acre of total disturbed area . . . ." The project falls below the  $\frac{1}{4}$  acre minimum, as follows:

- The project site consists of two parcels:
  - 211 West Seventh Street is the site of the original Cossetta's Restaurant building and the new addition. Pre-construction, (see Figure 8) 211 West Seventh Street was developed with the existing Cossetta's Restaurant and Market building and a parking lot at West Seventh and Chestnut, all of which is paved and impervious.
  - 212 Smith Avenue is the site of a public parking lot. Figure 8 shows the area that was an old building that Cossetta demolished in 2006 and paved with class 5 material. The balance of the Smith Avenue parcel was bituminous as shown.

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- Petitioner has used the two parcels separately for as long as he has owned both parcels. 211 West Seventh Street is zoned B-5 (CBD), and Cossetta's is therefore not required to provide any off-street parking. See Sec. 63.201. 212 Smith Avenue is separately licensed and used as a public parking lot. For legal purposes, therefore, each is a separate zoning lot.
- The parking lot at 212 Smith Avenue was not subject to Section 63.319 because the only area that is being disturbed is the 10,566 square feet of gravel, which is less than 1/4 acre. Further, under Section 63.301, the facility design standards apply only when the Code requires construction of a parking facility, or a parking facility is otherwise built. The parking lot at 212 Smith Avenue is an existing parking lot that has just been repaved.
- The parking lot at 211 West Seventh Street is not subject to Section 63.319 because, again, the on-site parking is not required for the restaurant and market and the Petitioner is not building a new parking lot. The Petitioner is in fact simply reducing the size of an existing parking lot.
- As a practical matter, when construction is complete there will be no net increase in impervious surface on the combined parcels.

### CONCLUSION

The Petitioner respectfully requests a variance from the requirements of Section 63.319 as interpreted and enforced by the Department of Public Works. The site conditions uncovered during construction and implementation of an MPCA-approved environmental cleanup make it clear that proceeding with installation of the underground stormwater storage system prescribed by Public Works will create hazardous conditions. Those hazardous conditions include unnecessary disturbance and spreading of potentially contaminated materials and installation of a 60,000 gallon cistern above and adjacent to a food preparation and storage area. The proposed underground stormwater storage system is inconsistent with the best management practice guidelines of the Minnesota Pollution Control Agency and the Metropolitan Council. If the site were just a few square feet larger, it would be subject to the jurisdiction of the Capitol Region Watershed District Rules, which would not require rate control at all and, if CRWD Rules did require improvements that would cut into the bedrock, CRWD would allow alternative compliance.

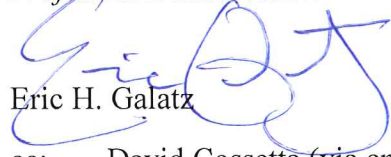
The requested variance satisfies all of the requirements of the ordinance: the variance (a) is in harmony with the purposes and intent of the zoning code; (b) is consistent with the comprehensive plan; (c) is required due to practical difficulties that would prevent the Petitioner from using the property in a reasonable manner; (d) addresses practical difficulties that are not only economic alone; (e) is required due to circumstances unique to the property not created by the Petitioner; (f) does not allow a use that is not otherwise allowed in the zoning district; and (g) will not alter the essential character of the surrounding area.

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The proposed underground stormwater storage system is incidental to the primary use of the property, which is a restaurant and market. The primary use is permitted by the comprehensive plan and the zoning ordinance. The variance will not have an adverse affect on the neighborhood or environment. In fact, the variance will contribute to the success of a redevelopment project that has been recognized by the Housing and Redevelopment Authority of Saint Paul as worthy of financial assistance.

Very truly yours,

LEONARD, STREET AND DEINARD  
*Professional Association*



Eric H. Galatz

cc: David Cossetta (via email, with enclosures)

Enclosures

1. Letter from Daniel M. Vruno, P.E.
2. Letter from John Krausert, P.E.
3. Figures referenced in this letter
4. 226 Ryan Avenue Property Info