

July 6, 2014

Council President Lantry,

I strongly recommend the council obtain an opinion from the Mn. Commissioner of Commerce regarding the Getten Credit appeal. Many opposition emails mention a payday lender coming to the neighborhood. The Highland Council resolution recommends Getten Credit, if approved, not be allowed to operate as a payday lender. The 2010 amendment that created “alternative financial establishment” as a new Use was based on a belief regulated lenders could operate similar to the businesses the city wished to address: pawnshops, currency exchanges and payday lenders. The state financial regulations are complex with many cross references; however, the 2010 study didn’t include an opinion from the Commissioner giving insight to Minnesota-specific regulations for the few business left like Getten Credit. Businesses in my youth we knew as credit or finance companies that didn’t offer other banking services but did offer a reasonable alternative to bank loans – a service the council knows is important to prevent the city-wide problems associated with predatory lending practices.

It appears from MS 56 that Getten Credit might not have authority to operate as a payday lender. It isn’t permitted under M.S. 56 to operate as a currency exchange, pawnshop or industrial loan and thrift. At the 2010 public hearing creating “alternative financial establishment” as a Use, you clarified the intent was to ensure a business didn’t obtain a license as one thing and then begin operating as another. This entire 2010 effort began as a response to the industrial loan and thrift loophole Payday America and others were exploiting under MS 53. However, that loophole isn’t present in the language of MS 56 and portions of MS 56 appear to prohibit a regulated lender from providing the loans allowed under MS 47.60 (payday loans). The commerce commissioner is given explicit authority to render opinions regarding the interpretation and application of MS 56 including deciding what associated services a regulated lender may provide without negative impact to the character of the licensed business.

It’s possible the 2010 action by the council was based on assumptions that have now caused unjustified emotional responses and tarnished the reputation of legitimate non-payday lenders. The public hearing notice in 2010 didn’t indicate the proposed change would impact MS 56 licensees despite the fact the study identified 3 that could be. If Getten Credit wasn’t individually notified that it would be impacted or wasn’t solicited for technical input, it has cause to argue it was effectively re-Zoned without due process. I believe a small bank branch offering products similar to payday loans (overdraft protection and other service charges with triple and quadruple apr rates) could operate as an office in the Zoning district in question. That’s why I recommend the council obtain an official opinion from the Commerce Commissioner to clarify on the record and for all interested parties what “loan loophole” a regulated lender subject to MS 56 could exploit that a state bank or credit union branch hasn’t or couldn’t. Without that clarification, the public purpose accomplished by including MS 56 licensees in the same category as payday lenders, currency exchanges or pawnshops is in doubt. Every entity concerned with the impacts of payday lending agree consumers need more, not fewer, credit options that don’t carry hidden predatory rates. That’s why US Bank and Norwest were finally advised earlier this year by federal regulators to stop offering deposit advance services that were payday loans for all intents and purposes.

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