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April 19, 2016

VIA ELECTRONIC MAIL

Hilary Dvorak
Principal City Planner
Department of Community Planning &
Economic Development
250 South Fourth Street
Room 300, Public Service Center
Minneapolis, MN 55415

Re: Response to Petition for an EAW for the 200 Central Avenue SE Project

Dear Ms. Dvorak:

Thank you for your prompt consideration of the Petition by Neighbors for East Bank Livability (the "Petition") for an Environmental Assessment Worksheet ("EAW") that was filed at the eleventh hour of the City's review of the applications to the Heritage Preservation Commission ("HPC") for the 200 Central Avenue SE redevelopment project proposed by Alatus LLC (the "Project"). The Project does not exceed any mandatory thresholds for preparation of an EAW. Further, the Petition fails to present material evidence that the Project may have the potential for significant environmental effects. On behalf of the project proposer, Alatus LLC, we urge the City to deny the petition for an EAW.

Legal Standards For The City's Review Of A Petition For An EAW

The Minnesota Environmental Protection Act provides that an EAW shall be prepared in response to a petition "whenever material evidence accompanying a petition . . . demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects." Minn. Stat. § 116D.04, Subd. 2a(c) (emphasis added.). "[M]aterial evidence" is evidence that is both admissible in an administrative proceeding before a state agency and relevant and consequential to whether the project may have the potential for significant environmental effects. Allegations of vague or generalized fears and concerns are therefore not sufficient under the statute." *Watab Township Citizen Alliance v. Benton County Board of Commissioners*, 728 N.W.2d 82, 90 (Minn. Ct. App. 2007).

Minnesota Rules elaborate on the review standard by adding the following:

The RGU [Responsible Governmental Unit] shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7.

Minn. Rule 4410.1100, Subp. 6. (emphasis added.) The RGU shall consider the following factors in making its determination:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

Minn. Rule, 4410.1700, Subp. 7.

The Project Does Not Exceed A Threshold For A Mandatory EAW

The mandatory threshold for an EAW for a residential project in the seven-county Twin Cities metropolitan area is 375 attached units. Minn. R. 4410.4300, subp. 19(D). An EAW is mandatory for new commercial construction equal to or exceeding 400,000 gross square feet in a city of the first class. Minn. R. 4410.4300, subp. 14(B). The Project is proposed to have 207 dwelling units and 6,700 square feet of commercial space. Individually, both the residential and commercial components of the Project are well below the respective thresholds for a mandatory EAW. For mixed-use developments, a mandatory EAW is required when the sum of the quotients resulting from the proportional mix of residential and commercial development equals or exceeds 1.0. Minn. R. 4410.4300, subp. 32. Applying this formula to the Project results in a sum of 0.57; only about one-half of the EAW threshold.

Although it is undisputed that the Project does not require an EAW under the rules that are typically applicable to developments in Minneapolis, Petitioners assert that the lower threshold of 150 attached units under Minn. R. 4410.4300, subp. 19(C) applies to mandate an EAW because the Project is not consistent with the City's comprehensive plan, the *Minneapolis Plan for Sustainable Growth*, (the "Comprehensive Plan"). The Petitioners note that the project site is guided as Commercial on the future land use map and that these areas "are less suited for mixed use development that includes residential." Nevertheless, this guidance does not prohibit residential use; in fact, multiple-family residential use is

permitted as of right in all Commercial zoning districts, with or without a commercial use component. The Petitioners also note that the project site is located in the East Hennepin Activity Center, but neglect to point out that mixed use with high to very high density residential housing is encouraged within Activity Centers. See Comprehensive Plan, Land Use Policy 1.12. Thus, the Project is highly consistent with guidance for Activity Centers. It is often the case in Minneapolis that multiple land use features and policies apply to development sites and that various development options are more or less consistent with different Comprehensive Plan policies. The policies of the Comprehensive Plan are guidance; they are not proscriptive or regulatory. Projects are not required to be consistent with every conceivably-applicable policy in the Comprehensive Plan in order for the Planning Commission to conclude that the Project is consistent with the Comprehensive Plan as a whole. Without arguing the specific merits of the Project in this response to the EAW petition, Alatus believes strongly that the Project is consistent with the most applicable and relevant policies of the Comprehensive Plan. In its report to the HPC recommending approval of the Project, Planning Staff concurred in this assessment.

The Petitioners go on to list a number of other generally-applicable Comprehensive Plan policies and implementation steps with which, they argue, the Project is not consistent. The cited policies seek to ensure that development is “compatible,” “appropriate,” “quality,” and in “character.” Again, interpretation and application of these policies is a subjective process. People with different perspectives and priorities could reach different conclusions. In order for a comprehensive plan provision to be the basis for triggering a mandatory EAW, the provision cannot be subjective. A comprehensive plan provision that is sufficiently definite and proscriptive would be one that specifies and limits with particularity allowed uses, density or height. Comprehensive plans for more rural cities often specifically limit residential density in undeveloped areas. See, for example, the 2030 Comprehensive Land Use Plan for the City of Rosemount that specifically limits density to 1 unit per 40 acres in areas designated on the future land use map as Agricultural and 1 unit per 5 acres in areas designated as Rural Residential. Development of 100 unattached or 150 attached units in one of these areas would be unambiguously not consistent with the comprehensive plan. In order to develop at greater density, an amendment to the comprehensive plan would have to be approved. This is the type of comprehensive plan issue that the EAW threshold in Minn. R. 4410.4300, subp. 19(C) is intended to address. It is not intended to, and does not, apply where an amendment to a comprehensive plan is not required as one of the land use applications needed for a particular project.

The Petition Fails To Present Material Evidence Of The Potential For Significant Environmental Effects

The Petitioners assert that the nature and location of the Project creates a potential for significant environmental effects relating to damage to adjacent historic structures, visual impacts and shadowing of historic properties, traffic impacts, noise and dust. The potential impacts described in the Petition are either subject to the City’s ongoing regulatory authority or lack material evidentiary support.

As “evidence” that construction of the Project should be expected to damage the Pillsbury Library and the Ard Godfrey House, the Petition includes a news article and other records related to damage that was caused to Our Lady of Lourdes Church when the Riverplace development, including a nearby underground garage, were constructed over 30 years ago. According to the information in the Petition, that project required blasting. What happened 34 years ago due to a much larger project in a

different location using unknown construction methods other than blasting to a historic building of a different design and materials is not relevant or material evidence of potential impacts due to construction of the Project. Current construction methods include pre-construction inspection, monitoring and multiple options for performing excavation and foundation work to mitigate vibrations and prevent damage to nearby structures. These procedures and construction methods are outlined in the letter from Meyer Borgman Johnson (“MBJ”), a structural engineering consultant, to Alatus dated April 15, 2016 (attached). Importantly, blasting will not be utilized for construction of the Project. Alatus and its contractors will work closely with the owners of the Pillsbury Library and the owners of other surrounding properties to perform pre-construction condition assessments and ongoing monitoring and will be able to take additional mitigation measures as needed throughout construction. Potential damage due to construction and truck-related vibration is a type of environmental effect that is not unique to the Project; it is routinely addressed through the mitigation measures discussed in the MBJ letter on urban projects, including those in historic districts and near historic buildings.

The Petition states that the Project will contribute to increases in air emissions and pollution due to increased traffic that could potentially increase health risks to the general public. As supporting “evidence,” the Petition includes two articles, likely pulled off the internet with a Google search, that are not relevant to assessing the traffic impacts of the Project and are of doubtful admissibility in an administrative proceeding. These articles support the propositions that vehicle emissions contribute to ambient air pollution that has a correlation to increases in health effects for people living or driving in areas of higher levels of pollution. Traffic-related air pollution is a legitimate concern, but it is the type of “generalized fear or concern” that is not a sufficient basis for granting a petition for an EAW. The fear that the number of parking spaces proposed for the Project (333 parking spaces) and the associated vehicle trips could cause a significant increase in air emissions that warrant study through an EAW is not supported by the information in the articles. Moreover, recent EAW’s performed for similar projects (required for those projects because they exceeded mandatory thresholds) concluded that air quality screening and modeling was not required because the increased traffic would generate a relatively small corresponding increase in carbon monoxide levels and other vehicle-related air emissions. See the EAW for the Kraus Anderson project (520 parking spaces) and the 600 Washington Avenue SE project (201 parking spaces). The EAW for the Lennar project (up to 1,000 parking spaces for both phases) at a site in close proximity to the Alatus Project similarly determined that no air quality screening was required because the existing and anticipated traffic volumes were well below the number at which such screening is recommended.

The City’s standard and comprehensive regulatory processes mitigate the other types of potential impacts described in the Petition. A Traffic Demand Management Plan and traffic study will be required to evaluate traffic impacts and identify mitigation measures if any are recommended. Visual and shadowing impacts of the Project will be evaluated by both the HPC for the requested Certificate of Appropriateness and by the City’s Planning Commission for the conditional use permit that will be required to allow the proposed building height. City ordinances regulate construction hours and noise levels and the City will require approval and implementation of plans to manage construction dust. An EAW would serve no useful purpose as all the relevant information has or will be developed in the normal course of the City’s land use and permitting review processes and the City has the authority to mitigate any potential significant environmental effects related to the Project.

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Conclusion

The Project does not exceed any applicable, mandatory threshold for an EAW. Further, the Petitioners have failed to present material evidence that the 200 Central Avenue SE Project may have the potential for significant environmental effects. The type and extent of the effects of the proposed project are typical of urban redevelopment and do not warrant further study through an EAW. Any potential environmental effects are subject to mitigation by the City and other agencies with ongoing regulatory authority. The rules of the Environmental Quality Board state that, if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects, the RGU shall deny the petition. Minn. Rule 4410.1100, subp. 6. Based on the failure to demonstrate such effects, we urge the City to deny the Petition/

Again, thank you for your timely consideration of the EAW Petition.

Best regards,

FAEGRE BAKER DANIELS LLP

A handwritten signature in blue ink that reads "Carol Lansing". The signature is written in a cursive, flowing style.

Carol Lansing

Attachment

MEYER BORGMAN JOHNSON

April 15, 2016

Chris Osmundson
Senior Development Associate
Alatus, LLC
800 Nicollet Mall, Suite 2850
Minneapolis, MN 55402

Re: 200 Central Avenue Southeast
Minneapolis, Minnesota

The purpose of this correspondence is to describe contemporary constructability approaches including means and methods that are commonly used in new urban construction to manage potential disruption, mitigate vibrations and improve predictability of outcome.

This significant project contemplates a 40 story residential tower overlying three stories of below grade parking. Construction materials will likely include cast-in-place concrete for floors, walls and columns. The building footings will bear on high capacity bedrock.

The existing Pillsbury Library is located to the north of the proposed project and an existing multi-level parking structure is located to the east.

The goal of executing projects adjacent to existing facilities is obviously to avoid damage or distress. Common approaches include a blend of activities as follows:

- **The Existing Facility**
 - Research and obtain any existing documentation of the building which may include original construction documents, previous remodeling, past repairs and maintenance. The current owner and the Minnesota Archives at the University of Minnesota are good potential resources for this information.
 - Perform a condition assessment of the facility documenting systems, materials, visual evidence of previous repairs and existing distress (i.e. settlement, uneven floors, cracks deterioration, any apparent lack of maintenance etc.).
 - Establish survey control points at key locations on the facility with the goal of first establishing a base line of data and then to periodically monitor during the course of construction.
 - We observed that the building has experienced adjacent “new” construction in the past: parking ramp to the east and office building to the north. Seeking data from those project experiences may be helpful in making judgements about means and methods for new construction.

- **Monitoring**
 - Provide seismic monitoring during the course of construction comparing data to established thresholds tailored to the existing building tolerances.
 - Crack monitoring and survey control – A second source of data collection to aid in monitoring adjacent construction and utilities during construction.

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- Develop a regular and actionable reporting process. If vibrations are detected to exceed the threshold, the activity is immediately terminated until an alternate procedure is determined.
- This work should be performed by a recognized and qualified independent testing agency.
- **Constructability – System Options to Reduce Vibrations**

Stability of the excavation during construction is extremely important. There are several approaches to providing this requirement. Over the years, there have been many technologies that have developed to meet the goals we have outlined. These methodologies can be procured competitively from well-established geotechnical subcontractors.

 - Predrilling soldier piles using the down-hole hammer (rotary drill) – This approach significantly reduces vibrations during installation and provides a reliable primary structure for the temporary retention wall.
 - Secant pile system – Concrete encased steel pile that forms both the temporary excavation wall and as a result of its interlocking character is often used as the permanent foundation wall.
 - Slurry Wall – This process incorporates a trenching methodology that constructs a concrete wall. Similar to the secant wall system, the outcome of this approach can be used for both the temporary and permanent foundation wall.
 - Chemical stabilization – A process where weaker granular subsoils are strengthened. This process can create a sandstone like condition in appropriate granular soils.
 - Temporary protection – Areas of the existing building are protected or strengthened.
 - Excavation will not require rock blasting – It is the current understanding that the project excavation will extend down to about the top of existing rock elevation where construction of high capacity footings will be constructed.
 - Soil nails and pre-stressed tie backs – High strength structural members that anchor the foundation wall to the surrounding soils to prevent displacement of the temporary shoring wall during construction.
 - Sequencing demolition to manage the process at a very low vibration frequency.

Processes and procedures outline here have been used successfully on “urban core” projects for many years and have provided good outcomes. We believe they will be excellent methods for the contractor to consider on this project.

We appreciate the opportunity to prepare this preliminary assessment of construction processes for your use. If you should have any questions or require additional information, please do not hesitate to contact us.

Sincerely,
Meyer Borgman Johnson


Daniel E. Murphy, PE
Principal