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November 2, 2009

Via E-Mail

Mayor Robert Chestnut
City Hall
6 East Sixth Street
Lawrence, Kansas 66044

Re: *Reconsideration of Rezoning Request (Z-7-11-09);
City Commission Regular Agenda Item #3, October 6, 2009*

Dear Mayor Chestnut:

Over the past several days, I have communicated the applicant's position regarding the City Commission's action on October 6 regarding the above-referenced rezoning request. I am writing on behalf of the applicant to formally appeal in writing the City Commission's denial of the rezoning request (Z-7-11-09), and to request that the City Commission reconsider this previous agenda item, and vote to rescind its prior motion to deny this rezoning request.

After visiting with the applicant, we are of the opinion that a more appropriate action on this agenda item should have been to table or defer the item, and allow the applicant a reasonable opportunity to respond to the concerns raised by the City Commission and members of the public. We are also of the opinion that members of the City Commission and the public may have misunderstood some of the applicable facts, or not been fully informed, as follows:

- (i) The current zoning category (RSO) already allows for multi-family structures on this property, with more than twice the density of total bedrooms than the applicant is proposing;
- (ii) The only reason that the applicant requested the rezoning (RM15) is to allow the construction of attached, single-bedroom unit structures, as shown on the applicant's site plan, which would actually reduce (not increase) by more than half the total number of bedrooms already allowed on this property under the current zoning category (i.e., more single-bedroom units, but less total density);
- (iii) The City Commission has the authority to send the rezoning back to the Planning Commission, with instructions to condition the rezoning upon approval of a site plan with a cap on the number and density of units that may be constructed on this property (e.g., "... not to exceed a maximum of 164 single-bedroom units"); and

- (iv) If the City Commission were so inclined, the applicant would be willing to revise the contract of purchase for this property to expressly provide in the contract that the requested rezoning (RS15) cannot become final, unless and until the applicant has removed all contingencies to close under the contract, and the applicant would be willing to consider other reasonable suggestions that the City Commission may have.

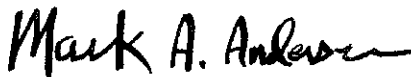
If the City Commission and members of the public had been fully informed of these facts, we believe that a majority of the City Commission would not have voted to deny the rezoning request. Also, please note that a vote by the City Commission at this time to rescind its prior motion is not the same as approving the rezoning. The rezoning application will still need to come back to the City Commission on a future, regular agenda, as a public hearing item. In the meantime, we believe that it is appropriate and reasonable for the City Commission to return the rezoning to the Planning Commission, and to allow the applicant an opportunity to more fully respond to the concerns raised by the City Commission and members of the public.

Please note that the Planning Commission considered this rezoning item in September, voted 8-1 to approve the rezoning request, and forwarded the rezoning to the City Commission with a recommendation for approval based on the findings of fact found in the body of the planning staff report. Furthermore, prior to the City Commission meeting on October 6, the applicant personally contacted and/or spoke with several members of the City Commission, offered to address any concerns and answer questions, and was led to believe that there were none.

On behalf of the applicant, we respectfully request that the City Commission reconsider the previous action, and vote to rescind its prior motion to deny this rezoning request. If you have any questions, or require any additional information, please let me know. Thank you.

Respectfully,

BARBER EMERSON, L.C.



Mark A. Andersen

MAA:dbk

cc: Vice-Mayor Mike Amyx (via e-mail)
Commissioner Aaron Cromwell (via e-mail)
Commissioner Lance Johnson (via e-mail)
Commissioner Michael Dever (via e-mail)
David Corliss, City Manager (via e-mail)
Michael D. Stultz (via e-mail)
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