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July 29, 2014

Sandra H. Johnson, City Attorney
City of Bloomington
1800 West Old Shakopee Road
Bloomington MN 55431-3027

Re: Auto Use Ordinance Amendments

Dear Sandy:

Thank you for your letter of July 2, 2014, responding to my letter of June 26, 2014 (which, you correctly point out, I emailed to you on June 24, 2014).

My letter raised the following four issues with the proposed Auto and Nonconforming Use Ordinance Amendments:

1. Defining "expansion" to include "relocation";

2. Requiring a Conditional Use Permit for "alterations or modifications to floor area" of existing automobile dealerships;

3. Requiring a Conditional Use Permit for "replacement" of a building; and

4. The broad and subjective nature of the proposed standard for approval of a Conditional Use Permit.

Your July 2, 2014, letter addresses the first of these issues, but is silent as to the other three. Perhaps we can agree to disagree on whether relocation of a building is an expansion of a use, and discuss the remaining three issues. Our points on these issues are as follows:

1. The proposed amendments would require a Conditional Use Permit, subject to an extremely vague standard for approval, for "alterations or modifications to floor area" of existing auto dealerships. As I pointed out in my letter of June 26, 2014, this language seems to be directly contrary to the direction City Council gave Staff in directing that the concept of "intensity" be deleted from the Nonconforming Use Ordinance. We understood the Council to be saying that they do not want the City interfering with business decisions regarding the use of internal space. To that extent, this is a policy issue, and we will take it up as such with the City Council.

However, Minnesota Statutes Section 462.357, Subd. 1e(a) protects existing lawful uses and allows them to be continued. In this case, the existing use is a Class I Auto Dealership. As long as the existing auto dealer's activities continue to fall within the definition of a Class I Auto Dealership, how the dealership is operated, including what percentage of the floor area is designated for office, storage, display, repair, etc. is protected by the Statute and cannot be subject to approval of a Conditional Use Permit.

2. The proposed amendments also would require a Conditional Use Permit for "replacement" of a building. Although you have correctly pointed out that Section 462.357, Subd. 1e(a) does not include the term relocation, it does include the term replacement. As such, nonconforming uses have the absolute right to replace a building and no Conditional Use Permit can or should be required for that replacement.

   If it is the City's position that the existing auto dealerships would not be protected by Section 462.357, Subd. 1e(a), I do not agree that the language of the Statute will support this position, as set forth in my June 26, 2014, letter. I would like to see if we can resolve this issue as I believe it is a pure legal issue, and there should be no need to bother the Council Members with it.

3. Finally, as mentioned in my letter of June 26, 2014, we are concerned about the proposed standard for approval of a Conditional Use Permit. What will "substantially delay" bringing a site into conformity? The Penn-American Plan says it will be decades before the auto dealerships are redeveloped. At least one Council Member, apparently, feels that it will be a matter of a few years. If a majority of the Council comes to this conclusion, would this standard allow them to deny a Conditional Use Permit to convert 100 square feet of office space to display space on the grounds that if the dealership wants to make that change it must be because it will improve their business and improving their business will substantially delay bringing the site into conformity? We continue to believe there should be objective standards for the Council address in determining whether to approve a Conditional Use Permit for future improvements to existing auto dealerships.

The Planning Commission hearing on the proposed Ordinance Amendments is set for August 21, 2014. City Council consideration is scheduled for September 22, 2014. We are prepared to bring our policy concerns with the proposed Ordinance Amendments forward to the Planning Commission and City Council, but continue to be hopeful that we can resolve a least some of these legal issues before the public hearing process. We continue to be available to meet with you and Glen and/or your respective staff members to see if we can resolve some of these issues.

Thank you for your time.

Sincerely,

PETER K. BECK ATTORNEY AT LAW PLLC

By: _____
Peter K. Beck

PKB:tk

cc: Glen Markegard, Planning Manager
Larry Lee, Director of Community Development
Amy Schmidt, Associate City Attorney
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