

CONSIDERATIONS OF RENT LEVELS AND COMPREHENSIVE PLAN COMPLAINTS ARE BOTH NECESSARY AND LEGALLY APPROPRIATE IN RESPONDING TO THE SITE PLAN APPLICATION FOR LEXINGTON STATION APARTMENTS

This memorandum is from the Housing Justice Center, Frogtown Neighborhood Association, Summit University Planning Council, and Midway RiseUP!.

On January 22, the Planning Commission voted not to approve the site plan application for the Lexington Station Apartments and review it again at the February 5 meeting. We believe that discussion of the application to date has been severely misdirected in at least four ways. First, staff improperly asserted that affordability is not relevant to site plan review. This assertion is contradicted by Minnesota statutes and by the Zoning Code itself. Second, staff was mistaken in their assertion that site plan rejection cannot be based solely on Comprehensive Plan inconsistency. Third, staff discussion of consistency with the Comprehensive Plan was inadequate. Fourth, information on rents and unit sizes necessary to determine consistency with the Comprehensive Plan was absent from the application for site plan review. The Commission should: 1) direct Alatus to supplement, or re-submit, its application with information on unit sizes and rents; 2) Review the supplemented application for consistency with Comprehensive Plan goals and policies related to equity and affordability; and 3) If necessary, notify Alatus that the City will take an additional 60 days for site plan review, pursuant to Minn. Stat. § 15.99 Subd. 3(f).

The Planning Commission may deny a site plan application as inconsistent with the Comprehensive Plan. During consideration of this project, Commissioners were told by staff that inconsistency with the Comprehensive Plan was not, by itself, sufficient for rejection of the site plan application. However, the zoning ordinance, Section 61.402(c), is clear and unambiguous. Site plan approval requires that the Commission must “consider and find” consistency with 11 different concerns, the first of which is consistency with the Comprehensive Plan and project plans for affected sub-areas. As set out below, consistency with the Comprehensive Plan’s affordable housing provisions should be a major concern with regard to this project.

The Planning Commission may deny a site plan application based on affordability considerations. Commissioners were repeatedly told that the rent levels and affordability were not relevant to site plan approval during consideration of this project. But Minnesota Statutes Section 462.358 Subd. 11 provides that in approving a “development application,” specifically including one for site plan approval, a city may require developer agreement on affordability requirements. A 2007 letter opinion by the Minnesota Attorney General issued to the City of Forest Lake found that, while the language of the statute could be more straightforward, “it seems clear that municipalities are authorized [by the statute] to require the developer’s agreement” to affordability requirements and that the Legislature intended that cities be able to disapprove a development application for failure to reach an affordability agreement.¹ As discussed below, the Comprehensive Plan provides a substantial basis for the provision of affordable housing as a requirement of site plan approval. Further, the zoning ordinance itself is broad enough to require review as to affordability. Section 61.401(3) requires a review of the

¹ 10/25/2007 AG letter to Forest Lake City Attorney available from: Library.AG@ag.state.mn.us

“intended use of the zoning lot and all structures upon it.” It’s hard to imagine a broader mandate.

The staff report was wholly inadequate in its discussion of consistency with the Comprehensive Plan. The 1/7/21 Zoning Committee staff report summarizes the staff argument for consistency with the Comprehensive Plan and sub-area plans as follows:

The site plan meets this finding. The proposed mixed-use project is consistent with the 2040 Saint Paul Comprehensive Plan (2020), the Lexington Station Area Plan (2008), and Union Park Community Plan (2016). Generally, the comprehensive plan encourages transit supportive density and supports growth and development of new housing, particularly in areas identified as Mixed Use, Urban Neighborhoods and/or in areas with the highest existing or planned transit capacity, to meet market demand for living in walkable, transit-accessible, urban neighborhoods. The plan also supports increases in density on valuable urban land and calls for high-quality urban design that supports pedestrian friendliness and a healthy environment, and enhances the public realm.

This summary of the purported consistency with the Comprehensive Plan consists entirely of Comprehensive Plan support for new density in transit-accessible areas. This approach to finding consistency with the Comprehensive Plan is one that is, unfortunately, routinely employed by city staff and city officials. It involves finding some policy somewhere in the plan which is consistent with the project while ignoring any policies with which the proposed project is inconsistent. Most importantly, the approach ignores the guidance built into the Comprehensive Plan itself as to how the Plan is to be interpreted. The guidance in the Plan focuses overwhelmingly on equity.

The very first two sentences of the Plan reads as follows: “The 2040 Comprehensive Plan is divided into seven main chapters, each focusing on a specific topic area. The chapters are informed by Saint Paul’s **core values**, the **community’s priorities**, and the city’s **current focus areas**.” (emphasis in the original). The policies set out in the seven chapters are, in other words, to be interpreted in light of the City’s core values, community priorities, and focus areas, each of which is directly incorporated into the plan through the links in that first sentence. The very first statement in each of those areas involves equity:

In Core Values: “**Equity and opportunity**. We are a city where opportunities in education, employment, housing, health and safety are equitably distributed and not pre-determined by race, gender identity, sexual orientation or age; we are a city that creates opportunities for all residents to achieve their highest potential.”

In community priorities: “**Livability, equity and sustainability**. When we asked about regional themes established by the Metropolitan Council, you said livability, equity and sustainability are the most important for Saint Paul.” A further community priority: “**Quality affordable housing**. You said we need more affordable housing, and that existing housing must be well-maintained.”

In focus areas: “**Equitable cities** create opportunities for all residents to achieve their highest potential. How Saint Paul grows, develops and invests over the next 20 years must be done in a way that reduces racial disparities in jobs, income, education and homeownership.”

Each chapter of the Comprehensive Plan is organized around a few critical goals. The following are the goals most closely related to the basic considerations of equity as applied to a rental housing development which is highly accessible to transit options – one half block from the Lexington Green Line station:

- Land Use chapter: Equitably-distributed community amenities, access to employment and housing choice.
- Transportation Chapter: A transportation system that supports access to employment and economic opportunity.
- Housing Chapter: Fair and equitable access to housing for all city residents; and improved access to affordable housing. A large number of specific policies related to goals 3 and 6 are relevant to this project.

The people who most need transit-oriented development are lower-income people without reliable cars. The first paragraph in the introduction to the transit-oriented development study quoted at length in The Land Use Chapter of the Comprehensive Plan says: “A primary approach to eTOD [equitable transit-oriented development] is the preservation and creation of dedicated affordable housing, which can ensure that high-opportunity neighborhoods are open to people from all walks of life.”² Housing Policy H-37 is to “encourage the development of affordable housing in areas well served by transit.” The Union Park Community Plan, Policy H1.2 is: “Support efforts to develop a wide range of housing affordability levels, promoting more affordable housing along major transit routes including...the Green Line Light Rail Line.”

In relying on comprehensive plan goals supporting higher residential densities near transit to find that the project plans are consistent with the comprehensive plan, the staff ignored all of Comprehensive Plan goals and policies with which the project is in conflict, especially those regarding the city’s desperate need for more affordable housing. But the Comprehensive plan’s explicit requirement that the City’s core values, community priorities and focus areas inform the entire Comprehensive Plan dictate that, in balancing such a conflict, the most weight must be given to Comprehensive Plan goals and policies relating to equity. The staff report has disregarded the most fundamental provisions of the Comprehensive Plan. The Planning Commission must correct those errors in the analysis of consistency with the Comprehensive Plan.

Alatus has not provided, and the Planning Commission has not considered, facts regarding project affordability sufficient to permit a finding of consistency with the Comprehensive Plan. Meeting the Land Use and Transportation goals cited above and providing fair and equitable access to housing requires a substantial affordability component, in rental housing built next to a major transit stop. Realizing that, the Alatus application for site plan approval includes in the Project Narrative the following:

The Project creatively supports the desire of area stakeholders to see a wider range in rents within new privately-financed developments, including more units at deeper levels of affordability. Specifically, the Project seeks to reduce construction costs and use new, efficient unit configurations (including affordable

² “Promoting Opportunity Through Equitable Transit-Oriented Development,” by Enterprise Community Partners, cited at length at page 37 of the Transportation Chapter of the Comprehensive Plan. See: <https://www.enterprisecommunity.org/download?fid=7022&nid=3489>

co-living suites) in an effort to achieve overall rent levels that will be appealing and attainable to both existing and new community members.

Despite having featured “a wider range of rent” in the supporting narrative, the site plan application has no information about proposed rents or unit sizes.

At the Zoning Committee hearing, the Alatus representative asserted that 155 of the proposed 288 units would be affordable at or below 60% of AMI. However, he declined to provide specific details. The 7/11/19 application for Metropolitan Council funding, which was later withdrawn, and multiple Alatus presentations to community groups and the media call into question Alatus’s assertions regarding deeper levels of affordability and rent levels appealing to existing community members. The Metro Council application form specifically said: “We will not accept public housing vouchers as our market rents will not be within the anticipated allowable voucher payment thresholds.” The application further asserts that 12 of the projected 226 units (5%) will have rents “affordable” at 51%-60% AMI. In other forums Alatus, repeated the 12 “affordable” unit proposal while indicating that in exchange all of the commercial spaces would then be required to pay market rents. It is very difficult to see how the project could afford only 12 units (5% of the total) affordable at or below 60% of AMI on the last occasions in which affordability was discussed and now suddenly being able to afford 155 such units (54% of all units). The developer’s unsupported assertions at the hearing are even more suspect given that the written site plan application submitted only a month ago discussed affordability without making a claim about 155 “affordable” units or even providing any data on rents by unit size, despite recognition of the importance placed on this issue by community groups.

Even if Alatus is actually proposing 155 units with rents at 60% of AMI, there would still be serious questions regarding consistency with Comprehensive Plan goals and policies regarding equity and affordable housing. First, units priced above 50% of AMI serve only a very small portion of renter households in need. The most recent HUD CHAS (Comprehensive Housing Affordability Strategy) data show that 99% of the 13,845 St. Paul renter households currently paying more than half their income for rent have incomes less than 50% of AMI and most of these have far lower incomes. These households will not even be able to access the proposed housing with vouchers because, as noted, the Alatus project will not accept vouchers. The severe city shortage of truly affordable housing, forcing thousands of households to pay far more than they can afford, has obvious implications for the equity concerns that are a foundation of the Comprehensive Plan. The HUD CHAS data indicate that households of color are three times as likely as white, non-Hispanic households to have severe housing problems. Public decisions that ignore this situation thus have a serious disparate adverse impact on households of color. Second, for the housing to be truly affordable, rent levels at or below 50% of AMI need to be in place for an extended period. Simply setting initial rents for units intended to ultimately be market rate units is insufficient. Third, the Alatus discussion hinted that the “affordable” units would tiny “micro” units, and there is a question if achieving affordability exclusively with such units is consistent with Comprehensive Plan goals and policies.