**Statement of Reasons for Appeal**

Appellant Thomas Tulien, owner and resident of 2545 Pillsbury Avenue, Minneapolis, and an individual impacted by the proposed project, presents the following reasons for his appeal of the Minneapolis City Planning Commission's ("Commission's") decision to grant the rezoning request, the condition use permit application and seven (7) variances requested by Applicant. The listed reasons do not purport to state all of defects or illegalities in the Commission's determinations. Appellant reserves the right to supplement this statement.

Subject to these qualifications, Appellant states as follows:

1. The proposed use is incompatible with the City's present zoning ordinance. This use exceeds substantially all of the City's zoning controls at issue. Moreover, the proposed use would not even be permitted under the City's Comprehensive Plan "Minneapolis 2040". Under Minneapolis 2040, this property would be limited to a three-story building. Appellant notes that despite the square footage and the density proposed by Applicant, the project still fails to provide any affordable housing benefits. Nor does the project provide any aspirational environmental goals of the City. In short, this use provides maximum economic return to the Applicant while flouting zoning, ignoring building code, and returning no unique benefit of any kind to the community.

2. The rezoning of the properties at 110 26th Street West and 2542-Blaisdell Avenue to the OR2 High Density Office Residence District is unlawful because Applicant failed to comply with Minnesota Statute § 462.357 by failing to file in the office of the City Clerk a written consent of the owners of two-thirds of owners within 100 feet of the total contiguous descriptions of real estate within one year preceding the Applicant's rezoning request. See *Beck v. City of St. Paul*, 231 N.W.2d 919, 923 (Minn. 1975).

3. Appellant objects to the Commission's approval of the applicant's application for a conditional use permit ("CUP") to increase the maximum allowable height of the proposed building from four stories (56 feet) to six stories (73.3 feet). Minnesota law requires that a city may lawfully approve a CUP only upon "a showing by the applicant that the standards and criteria stated in the [city's zoning] ordinance will be satisfied." Minn. Stat. § 462.3595, subd. 1 (2017); *see also RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 78 (Minn. 2015). Additionally, a city's decision to approve or deny a conditional use permit must have a factual basis in the record before the city, and it must also meet the requirements specified by the relevant zoning ordinance. *RDNT, LLC*, 861 N.W.2d at 76-77; *Yang v. County of Carver*, 660 N.W.2d, 828 (Minn. Ct. App. 2003). An applicant has the burden to satisfy the standards and criteria for CUP approval set forth in a city's ordinance. *RNDT, LLC*, 861 N.W.2d at 78. Here, the City's zoning ordinance establishes six objective

standards and criteria which an applicant must satisfy in order to obtain approval of a CUP. *See* City Code § 525.340. The applicant here did not even attempt to satisfy these standards and criteria for CUP approval. Accordingly, it did not satisfy its burden of establishing itself to be entitled to a CUP, and the Commission should not have approved its application.

4. Appellant objects to the Commission's approval of the seven zoning variances for the project proposed by applicants. As the City planning staff repeatedly noted in its report to the Commission, the applicant requested all seven variances for the purpose of obtaining approval of a building with a mass and dimensions that are "significantly larger than what is allowed in the zoning code and are significantly larger than what would be appropriate for urban neighborhoods in the comprehensive plan." *See, e.g.,* CPED Staff Report dated July 8, 2019, p. 8. Minnesota's municipal zoning enabling statute authorizes a municipality to provide for variances from the requirements of the municipality's zoning ordinance. Minn. Stat. § 462.357, subd. 6(2) (2018). Pursuant to the authority conferred by this statute, the City's zoning ordinance provides that a variance may be granted in the following circumstances:

> A variance may be granted from the regulations of the zoning code only when the applicable board, commission, or council makes each of the following findings based upon the evidence presented to it in each specific case:
>
> (1) Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.
>
> (2) The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.
>
> (3) The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

City Code § 525.500. As Minnesota law requires, the variance standard in the City zoning ordinance is substantially identical to the standard established by Minn. Stat.

§ 462.357, subd. 6. *See Krummenacher*, 783 N.W.2d at 733 (holding that a municipality has no lawful authority to apply a different standard for the approval of variances than the standard established by the Minnesota municipal zoning statute).

Here, there are no "practical difficulties" arising from "circumstances unique to the property" that prevent the applicant from complying strictly with the City's zoning ordinance. There is absolutely nothing that precludes the applicant from building a smaller four-story building that complies with the City's zoning ordinance. The purportedly "unique circumstances" identified by the applicant are, in fact, common to all properties and are in no way unique to the proposed project site. The only conceivable purpose of the requested variances is to maximize the applicant's profit by cramming as many units as possible onto the subject site without triggering an obligation to construct affordable units as required by the City's Interim Inclusionary Housing Ordinance. This is not a reason that is legally sufficient to justify the granting of any single zoning variance, much less seven zoning variances for the same project.

5. Additionally, the variance increasing the maximum height from 4 stories (56 feet) to 6 stories (73.5 feet) is unlawful because it fails to comply with Minneapolis City Ordinance 525.300 in that it is an amplification of a permitted use. It is in effect a rezoning to an OR3 Institutional Office Residence District.

6. Appellant notes that the Applicant appears to have submitted a "shadow study" for a four (4) story building to the Commission, and yet received approval for a six (6) story building. Again, this use is incompatible with the existing and future uses of the immediate neighborhood and the Blaisdell Avenue corridor specifically. The nearby Lake Street and Nicollet Avenue corridors are more suitable (and zoned) for such high-density use. The fact that Lake Street and Nicollet Avenue, both suitable locations for this project, are "close enough" to the property at issue is not sufficient basis for the Commission's dramatic departure from applicable legal standards.

7. The Commission lacks the statutory authority to approve zoning variances. The City's zoning ordinance includes a "concurrent review" provision which states that the Commission has the authority to review variance applications when such applications are submitted concurrently with applications to the planning for other types of approval relating to the same project. *See* City Code § 525.20. This ordinance provision does not actually say whether the Commission may actually *act* on such variance application. Here, it appears that the Commission has, in fact, acted on the applicant variance application and voted to approve the seven requested variances. The Commission does not have the authority to do this. Such authority belongs solely to the City's board of adjustment and appeal (which, as the City knows, is a body separate from the Commission with different members).

Even as a home rule charter city, the City does not have the legal authority to deviate from the procedures for approving zoning variances established by the Minnesota Municipal Planning Act, Minn. Stat. § 462.351, et seq. Under Minnesota law, "municipalities have no inherent powers, but only such powers as are expressly conferred by statute or are implied as necessary in aid of those powers which are expressly applied." *Welsh v. Orono*, 355 N.W.2d 117, 120 (Minn. 1984). The Minnesota Municipal Planning Act establishes very specific procedures by which a Minnesota municipality must administer and apply municipal zoning ordinances. *See* Minn. Stat. § 462.354, subd. 2 (2018); and Minn. Stat. § 462.357, subd. 6(2) (2018). Minnesota appellate courts have held that the Municipal Planning Act preempts home rule cities from adopting land use and subdivision ordinances that conflict with the procedures set forth in the Municipal Planning Act. In this regard, the Minnesota Court of Appeals has stated as follows:

> The legislature has declared its intent to provide Minnesota municipalities with a "single body of law" that contains both the "necessary powers" and a "uniform procedure" for municipal planning. Minn. Stat. § 462.351... [T]hat single body of law, reflected in the MPA and MLPA, sets out a detailed and elaborate structure of procedural authority and processes for comprehensive land use planning and for ensuring reasonable compatibility with land use plans of other municipalities.

*Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348-49 (Minn. Ct. App. 2002). By adopting a "concurrent review" ordinance that purports to allow the Commission to hear and approve variance applications, the City is deviating from the "uniform procedure" for municipal planning established by the Minnesota Legislature. The City does not have the authority to do this, and the seven variances purportedly approved by the Commission are void as a matter of law for this reason.

8. As noted above, Appellant reserves the right to submit additional supporting materials and to identify additional reasons why the City Council should reverse the decisions of the Commission between the date of this appeal and the time at which the City Council considers this appeal.