J. Herzog & Sons, Inc.

REAL ESTATE INVESTMENT & MANAGEMENT

July 22, 2009

Via e-mail and regular mail

Mr. Brad Murphy
Planning Unit Director
Department of Planning and Development
P.O. Box 2985
Madison, WI 53701-2985

Dear Brad:

I am writing this letter to voice our concern regarding the Midvale Heights/Westmorland Joint Neighborhood Plan (the "Plan") as dated July 2, 2009. Specifically, we are concerned that the latest Plan's ambiguities regarding the redevelopment of Westgate Mall may hinder future development of the site.

As referenced in the staff report, the Plan is a five to ten year plan. None of the redevelopment examples in the Plan depict the Hy-Vee development that was approved by the Urban Design Commission (UDC) on January 21, 2009 and the Plan Commission on February 9, 2009, and therefore do not accurately reflect the existing conditions nor the realty of the re-development that will occur at the site during this time frame. The Plan also states that "the stand-alone grocery store is not consistent with the objectives of the Comprehensive Plan or Midvale-Westmorland Neighborhood Plan". It has nonetheless been approved by both UDC and the Planning Commission, and as such, is a part of the comprehensive plan for the mall.

The appendix concludes that "the Joint Steering Committee supports short and mid-range efforts to ensure the continued success of Westgate Mall and its tenants, provided that those efforts do not preclude the ultimate goal of increasing density and the mixture of uses on the site". We believe that this sentence is ambiguous and inconsistent with the stated time frame of the plan and may result in confusion or worse yet, a barrier to proposing and approving future developments.

As mentioned in my letter dated May 2, 2009, we remain very concerned that the proposed Plan imposes unprecedented density and mixed use more than any current or existing CMU zones in the City of Madison and does not adequately address the existing conditions at the site including:

- restrictions from existing tenants who have lease terms extending out over 20 to 40 years
- restrictions from existing tenants who have rights to prevent changes to the common areas
- the difficulty of securing tenants for a multi-use, multi-story project
- the difficulty of financing a multi-use, multi-story project with speculative users

All of the existing conditions were discussed with the Neighborhood Steering Commission, and Plan Commission during the approval of the Hy-Vee development.

As it stands, the Plan does not take into account any consideration or suggestions from the property owner, nor does it adequately incorporate any of the current conditions that exist at the site. Our concerns remain that the proposed Plan in it's current form could serve to hinder a realistic and achievable approach to incremental development at the site.
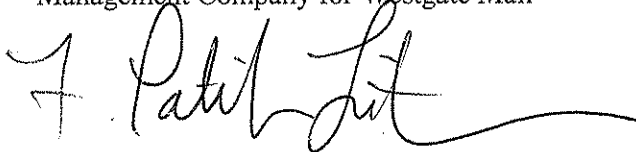
During the review of the Hy-Vee development, we were encouraged by both staff and neighbors to prepare a development plan for the mall. We retained Schreiber Anderson which prepared and presented such a plan. Input to the plan was received from both Neighbors and Staff. Although our development plan as prepared by Schreiber Anderson and Associates has been included in Appendix F, we believe that this plan should be included in the body of the Plan as an example of a realistic development of the property. In addition, we are requesting that the existing conditions be added to the Plan or that this letter be included within the Plan.

In the end, we remain confident that we will be able to achieve the goal of a mixed-use, higher density project as market opportunities arise and through continued work and communication with the local neighborhoods and City officials.

Sincerely,

J. HERZOG & SONS, INC.
Management Company for Westgate Mall

F. Patrick Listermann
Chief Operating Officer

CC: Alder Person Ms. Thuy Pham-Remmele
     Alder Person Chris Schmidt
     Mario Mendoza
     Hank Gempeler