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Received in the Council Office

August 9, 2016 at 11:19 AM

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(by appointment only)

August 2, 2016

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SANDY CITY PLANNING DIVISION

c/o Community Development Department

Attn: Tom Dolan, Mayor

Byron Jorgenson, Chief Administrative Officer

Michael G. Coulam, Director

10000 Centennial Parkway

Sandy, Utah 84070

E-mail: Mike Wilcox, Long Range Planning Manager, mwilcox@sandy.utah.gov

Re: Objection to Zoning Request of David Cannell with Fratelli Ristorante

Dear Planning Commission Members,

This firm represents the Hearthstone Homeowners Association, which is a residential subdivision located adjacent to the "Cannell" property.

We understand that approximately 0.66 acres are proposed to be rezoned from the SD (PO/R [5.7]) "Special Development District" designation to a CC "Community Commercial District" zoning status.

The "Cannell" property is located at approximately 1420 East Segoe Lily Drive and, if approved, the application for re-zoning would allow for a proposed restaurant. Perhaps more importantly, this rezone may "open the door" to other types of commercial activities on this parcel. In fact, this proposal should be viewed from with a long-term perspective whereby consideration is given to the fact that there is no guarantee that financing and other required items will be obtained to actually construct the proposed restaurant, requiring consideration of all possible uses that may be allowed with CC zoning. We are adamant that on this parcel none of the CC zoning uses are compatible with the adjacent residential communities, the Sandy City Land Development Code or the City's General Plan.

SUMMARY:

A Community Commercial District is contrary to the original zoning objectives for this area (see history below) and it is contrary to the general welfare, health, safety, aesthetics and the "protection and promotion of housing" which is a stated goal of the General Plan. See 15A-06-01(F).

Of critical importance is the fact that the surrounding residential home owners relied on the current SD (PO/R)(R5.7) zoning designation when purchasing their



homes. This expectation must be protected by the Planning Commission and the intent behind the current zoning be honored. See Ordinances: #04-28, 2004; and #89-13, 1989 in which this intent was clearly stated.

In both cases of the prior rezoning of this same parcel, it was determined the request was compatible with the best interest of the particular neighborhood. **This determination remains applicable today and must not be changed. To change merely furthers the interests of the minority over the majority.**

Inadequate studies (or none at all) have admittedly not addressed critical issues relevant to this parcel for this re-zoning request. See Planning Commission Minutes, May 19, 2016.

For example:

- (1) The effect of this zoning change over the "long term" has not been considered. The Commission must consider what a "CC" zoning status allows long term. That is, with CC zoning what else could be placed on this parcel. Such uses could occur now (in the event the restaurant plans fail for whatever reason), or years from now? What additional consequences and even greater negative impact on the residential homeowners may this zoning change cause?
- (2) Has the Questar 16 inch high pressure line and other major utilities on the property been studied? Have the appropriate agencies been contacted to ensure these utilities and/or easement are not affected or damaged? Our research indicates that Questar has contacted the City. What were there concerns? How have they been addressed?
- (3) Traffic patterns have not been sufficiently studied nor discussed. To be very concise, it is obvious to us that traffic will be diverted into the residential communities causing an unsafe environment for children and the structure will affect lines of sight for drivers and especially homeowners in this area. A resident stated on the recorded (May 19th minutes) that turning left (onto Seago Lily) during rush hour will be a major problem for her residential community. This safety concern cannot be overlooked and, at a very minimum traffic impact studies must be conducted. This is the expectation of the residents. Further, there are forthcoming changes to traffic patterns in the area in light of the new pedestrian bridge that cannot be accounted for in any analyses put forth thus far.
- (4) Similar to #2 above, parking issues have not been adequately discussed or studied with potential street parking consequences in summer and especially winter months.



(5) Se-go Lily has bike lanes on both sides of the street as confirmed by the Master Plan. How will this requested change affect the health and safety of those using the biking lanes? Even if minor impact, there is still risk associated to this proposal. Have any studies been performed? Does the City want to assume this risk – which makes everything become less and less residential in nature, feel and aesthetics.

(6) Other traffic related issues such as the nuisance created by commercial trucks, customer "foot and vehicular" traffic and late night business operations (9 pm weekdays and 10 pm weekends) and the impact on adjacent owners have not been adequately studied; and simply should be not be deemed appropriate for this area.

(7) The objectives of the current zoning – is consistent with the history of the zoning for this parcel and the Planning Commission must realize that this objective serves the needs of the community and is proper "as is." There is ample CC zoned property very close by that has long been available thus undermining any claimed need for this change.

Why make a change to zoning when the current zoning classification was made to protect the surrounding residential neighborhoods and continues to satisfy this objective.

No change is needed and the expectation of the residential owners will be protected by honoring the current zoning status. **The applicant bought this property knowing it was not zoned for their intended use. In fact, the applicant purchased this parcel ostensibly because those properties that are properly CC zoned cost more. The applicants intended use is contrary to the long-standing rule of giving force and effect to the original zoning decisions of the Planning Commission when there is no justifiable need or compelling reason to change the zoning designation.**

The Commission must keep in mind that a "CC" zoning has long lasting, and likely unforeseeable consequences especially if the restaurant ceases to operate. What other nuisances, noise, traffic, health safety concerns might arise from this and other commercial business if the zoning is changed?

Our request is that a "CC" rezoning classification be denied and that the property maintains its current zoning status or reclassification to SD (PO), which is more suitable for this area and its residents. See 15A-19-01(H).

I will explain our issues more fully below.



HISTORY:

1989: As the Commission is well aware from its May 11, 2016 Memorandum, the history of the subject property clearly shows deliberation as early as 1989 to only allow for a special district to be created **for the purpose of providing an area for single-family residential with a separate area for professional and business offices.**

2004: Rezoning was permitted from SD PO/R (Library Zone) to SD (PO/R)(R5.7) zone. Despite this rezoning, it was part of the original SD PO/R Library Zone and never contemplated a CC zoning designation for the obvious reasons of maintaining the original and stated objectives of the Planning Commission to:

- (1) allow single-family residences; and
- (2) professional and business offices.

The current rezoning request to "CC" runs afoul the original, and still applicable, zoning concerns stated as early as 1989.

IMPORTANT CONSIDERATION: In fact, with the growth of the surrounding residential communities (not to mention traffic patterns), we maintain that the need to maintain the goals and objectives as set forth both in 1989 and 2004 are even more applicable today.

ARGUMENT:

The Cannell proposal is made in the interest of the restaurant owners (not the community and not the original property developer the previously was involved in obtaining the present zoning). In fact, despite the Cannell's knowing the parcel was not zoned for their intended use, nor harmonious with residential communities, they still went forward with their purchase on speculative plans to obtain a rezone after purchase. Unfortunately, those plans should be stopped as this parcel is already properly zoned given its location to residential neighborhoods and the recently completed medical offices across the street. The Planning Commission decided in 1989 and 20014 what zoning is appropriate given this proximity and that decision should not be disturbed.

Even the present Cannell proposal, namely, the site plan, needs further refining through the review process with the City Staff. Such was admitted in the May 11, 2016 Community Development Department Memorandum, Page 2. This should give pause to Commission's consideration of this rezone, because such needed refinement enhances the possibility that the proposed restaurant may not actually come to fruition thus opening the door to all other possibilities allowed with the CC zone designation.

When the intent and history of the current zoning is closely examined, the site plan defeats the objects of the original intent of the current zoning; fails to



protect the residents; and has not undertaken the necessary investigation on easements, utilities, parking, noise, traffic and most importantly, what a "CC" zoning changes means over the long term since a different type of a business would now be permitted on this parcel.

Further, the proposed restaurant frustrates the express intent and purpose of Commercial/Industrial Zoning in Sandy City.

Goal 1.1 – Allow neighborhood-oriented shopping within the various communities of Sandy in locations of greatest accessibility and least impact on residential neighborhoods.

THIS GOAL IS FRUSTRATED because a restaurant is not a shopping business. Restaurants have much later hours than commercial shopping, alcohol may be served late at night, late night traffic is increased, diners may be seated outside causing additional noise to the residents and finally, traffic will most likely be heavily diverted into residential neighborhoods with no study to the contrary, nor have issues of excessive parking needs been adequately addressed.

Goal 4.0 – Allow retail commercial zoning designations only when it can be shown that a proposed area qualifies by compliance with the basic zoning prerequisites as adopted through the Sandy City Development Code.

THIS GOAL IS FRUSTRATED because pursuant to the Sandy City Land Development Code 15A-04-11(E), a Community Commercial District necessarily requires and is expressly intended, as a basic component to this zoning designation, to allow for retail business...**to be grouped together** in a well planned and designed planned commercial center(s)...."

Clearly the intent of the CC zoning designation is not, or should not be, for a single, free standing commercial building, but for a group of business located in an overall commercial area. In addition, alcohol consumption related issues, commercial deliveries, late hours of operation, and parking, all increase traffic and related safety concerns if the current zoning is changed. The applicable Sandy City Code was drafted to protect both commercial and residential interests. The current zoning finds this balance, however, a "CC" designation defeats the intent of the Code and harms the residential protection afforded therein.

Section 15A-19-01(H) regarding Special Development Districts entitled "Reversion" states that there will be an annual review of SD zones (this part is not discretionary). If substantial construction is not initiated within a year of the zone approval, the classification may be reverted to the previous classification or that of an abutting district. Upon information and belief, it appears that no such review(s) of the SD zone on this parcel have ever been conducted. The Planning Commission has further authority to maintain the status quo or even revert to a prior zoning status. This is relevant as it provides further evidence that the



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property, as currently zoned, makes logical and legal sense for this area and should not be changed.

CONCLUSION:

For these reasons, including the fact that (a) other "CC" zoned properties are not hard to find and (b) the Code was drafted, and the current zoning was established to protect the expectation of residential owners with what was deemed a fair balance for that parcel, all dictate that the current zoning should not be changed and that the application for a "CC" designation be denied.

The residential owners and communities' health, general welfare, safety and protection of their property rights from the unintended consequences of a "CC" zoning change have not been adequately studied. We submit that even if properly studied, the results will show that the current zoning is appropriate and that any change thereto frustrate the General Plan and its purposes, as well as the expectations of the adjacent residential property owners.

The letters submitted and concerns expressed from other adjacent property owners support the arguments made herein and must be read together with the concepts and points made above.

Sincerely,

A handwritten signature in blue ink, appearing to read "John D. Richards III".

John D. Richards III
Managing Partner, Utah

JDR: