

Keats Bloomington, LLC
3 19 Barry Avenue, Suite 205
Wayzata, MN 55391

September 25, 2019

By Email to: mcentinario@bloomingtonmn.gov

Mike Centinario, Planner
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

Re: Case File No. PL2019-150

Dear Mr. Centinario:

I am the owner of Keats Bloomington, LLC, which owns 7845 Lyndale Avenue (operated as a Goodwill), which is adjacent to the Luther property seeking redevelopment approvals. In 1979, when my father owned this property, the City of Bloomington obtained from him an "easement for public access" over the property (Quitclaim Deed Document No. 498832). Since that time, the surrounding properties have changed ownership and been repurposed and streets and alleys have been reconfigured so that now, the easement in question no longer serves as "public access" but serves solely as private access for the Luther property, including car-carrying semi-trucks which often park in the area interfering with Goodwill's parking lot. The Luther traffic through what otherwise functions as a private parking lot creates safety issues for Goodwill's patrons as well. Neither the City nor Luther maintains the easement, placing that burden solely on me.

As an adjacent property owner, I object to the redevelopment of the Luther, which will likely increase the use, and burdens, of the "public" easement over my property, despite its wholly private purpose. In contrast, Luther does not need this easement. The Luther property has always had access to Lyndale Avenue, and as I see from the redevelopment plan, after redevelopment it will have a second access point, to American Boulevard, less than 100 feet from the 1979 easement curb cut. Rather than seek to challenge the validity of the easement, I request that a condition of any approval of the Luther property redevelopment be the release by the City of the 1979 easement.

I am happy to discuss this with you at your convenience at (612) 701-6600.

Ben Smith

Cc: Patrick B. Steinhoff, Esq.

MALKERSON GUNN MARTIN LLP

1900 U.S. BANK PLAZA SOUTH TOWER
220 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE 612-344-1111
FACSIMILE 612-344-1414

Patrick B. Steinhoff
Direct Dial No. 612.455.6601
bdm@mgmllp.com

September 26, 2019

Planning Commission
City of Bloomington
1800 W. Old Shakopee Road
Bloomington, MN 55431

RE: Luther Company, LLLP - CUP and Site Plan Approval Application
Property Located at 7801 Lyndale Ave. S., Bloomington MN
Our File No. 2146.001

Dear Members of the Planning Commission:

I represent Keats Bloomington, LLC, which is the owner of the property operated as a Goodwill located 7845 Lyndale Avenue (the "Goodwill Property"). The Goodwill Property located at the intersection of Lyndale Avenue and West 78th Street and is adjacent to the Luther Subaru/Acura dealership that is subject the above-referenced application.

My client opposes the granting of the conditional use permit and the approval of the proposed site plan. The redevelopment proposed by Luther Subaru/Acura will only intensify an unfair and dangerous condition created by the City and Luther Subaru/Acura that has existed on the Goodwill Property for years (namely, the traversing of the Goodwill parking lot by Luther Subaru/Acura delivery drivers and employees, and the passage and temporary parking of car-carrying semis, pursuant to a "public" easement that ceased to be "public" years ago). It therefore does not satisfy the requirements in the City's zoning ordinance for conditional use permit approval.

In 1979, a prior owner of the Goodwill Property (Donald K. Smith)¹ granted an easement to the City for "public access purposes" over a 25-foot wide strip of what is now the Goodwill parking lot. In 1979, this easement provided a connection to West 78th Street to a number of different parcels abutting what is now I-494. For your convenient reference, I attach as Exhibit A a copy of the easement instrument along with a sketch of the parcels existing in the subject area in 1978. Today, all such parcels have been consolidated into common ownership by Luther Subaru/Acura which already has direct access to West 78th Street. The original purpose of the easement no longer exists and has not existed for some time. Today, the easement is used as nothing more than a private driveway across the Goodwill Property for the sole benefit of Luther Subaru/Acura,

¹ Donald K. Smith is the father of Ben Smith, the current owner and chief manager of Keats Bloomington, LLC.

exists and has not existed for some time. Today, the easement is used as nothing more than a private driveway across the Goodwill Property for the sole benefit of Luther Subaru/Acura, contrary to its specifically stated purpose.

The City long ago abandoned use of the easement for “public access purposes.”² Members of the public do not use the easement and have not for decades. The only users of the easement have been Luther Subaru/Acura employees and invitees, which include the drivers of large trucks delivering shipments of automobiles to the dealership.³ The City does not maintain the easement area has not as long as my client has owned the Goodwill Property. All maintenance responsibility has fallen to my client and its tenant at substantial cost (to which neither the City nor Luther Subaru/Acura have ever contributed a single penny). Neither the City nor Luther Subaru/Acura have ever taken any measures to lessen the obvious dangers arising from a car dealership using the parking lot of a Goodwill store for car-carrying semis, deliveries and employee access. These dangers have always been unacceptable, but they are particularly unacceptable and unnecessary now because Luther Subaru/Acura will have direct access to West 78th Street by means of the curb cut shown on its proposed site plan.

My client’s chief manager, Ben Smith, has conferred with the City planning staff about this matter. I understand that the City planning staff discussed this with Luther Subaru/Acura. I understand that the City planning staff proposed to Luther Subaru/Acura ways in which it could it could modify its site plan design to eliminate the need for access across the Goodwill Property. My understanding is that Luther Subaru/Acura would not agree to the staff’s proposal for reasons of cost. Although my client was not privy to these discussions and does not know the details of whatever proposal the City staff made to Luther Subaru/Acura, my client would be happy to discuss with the City and Luther Subaru/Acura ways in which the parties could cooperate to ensure Luther Subaru/Acura enjoys quality access to West 78th Street without continuing to traverse the Goodwill parking lot. At the very least, the Planning Commission should table these applications and direct Luther Subaru/Acura to engage with my client and the City staff concerning this issue.

The City’s zoning ordinance requires that, in order to approve a conditional use permit, the Planning Commission must make a finding that the “proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.” City Code § 21.501.04(e)(5). I do not see how it is possible for the Planning Commission to make such a

² Independent of this application, there is nothing stopping the City from releasing this easement and conveying it back to my client. Luther Subaru/Acura has no interest in my client’s property and would have no basis to object to a formal release of the easement (which would only memorialize an abandonment by the City which has already occurred).

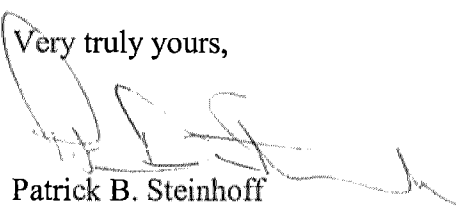
³ Based on my client’s observation over the years, Luther Subaru/Acura customers do not use the easement area and are likely unaware of its existence. The sole users of the easement appear to be Luther Subaru/Acura employees and truck drivers making deliveries to the Luther Subaru/Acura dealership, many of which traverse the Goodwill parking lot at unsafe speeds; obstruct access to parking spaces by Goodwill customers; and obstruct access to the Goodwill building by its customers.

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finding here. I therefore respectfully ask that the Planning Commission vote to deny the applications of Luther Subaru/Acura unless Luther Subaru/Acura makes whatever modifications to its proposal and site plan are necessary to discontinue its use of my client's property as a private driveway.

Regardless of the whether the City approves these applications or not, my client is no longer willing to allow its property to be used as a private driveway for Luther Subaru/Acura. This easement is no longer used by the public or the City. If the City continues to allow it to be used for private purposes, my client intends to bring a legal action for the purpose of extinguishing the easement due to its abandonment by the City.

I thank you in advance for your thoughtful consideration of this letter.

Very truly yours,

Patrick B. Steinhoff

BDM/PBS:ts

cc: Michael Centinario, City Planner
Melissa Manderschied, City Attorney
Client

791-21 TORRENS 7498832

This Indenture, Made this 2nd day of February, 1979, between Donald K. Smith and Deloren A. Smith, husband and wife,

of the County of Hennepin and State of Minnesota, parties of the first part, and THE City of Bloomington, a municipal corporation under the laws of the State of Minnesota, party of the second part,

Witnesseth, That the said parties of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration DOLLARS, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Quitclaim, and Convey unto the said party of the second part, its successors and assigns, Forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota, described as follows, to-wit:

A permanent easement for public access purposes over and across the westerly 25 feet of the easterly 44 feet of the following described tract:

Lot 1, Block 1, DONALD K. SMITH 1ST ADDITION

TRANSMITTED
FEB 6 1979
FINANCE DIVISION
HENNEPIN COUNTY
[Signature]

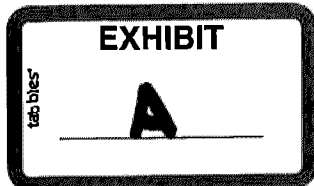
STATE DEED TAX DUE HEREON: \$ -0-

To Have and to Hold the Same, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, its successors and assigns, Forever.

In Testimony Whereof, The said parties of the first part have hereunto set their hands the day and year first above written.

[Signature of Donald K. Smith]

[Signature of Deloren A. Smith]



Doc. No. **QUIT CLAIM DEED**
Individual to Corporation

TO

Office of County Recorder
State of Minnesota

County of }
I hereby certify that the within Deed
was filed in this office for record on the
19 . . . at . . . o'clock . . . M.
and was duly recorded in Book . . .
of Deeds, page . . . or
 Normal Microfilmed
and was duly recorded as instrument
No. . . .

By . . . County Recorder.
Deputy.
No Delinquent Taxes and Transfer
entered this . . . day of . . .

By . . . County Auditor.
Deputy.
Tax statements for the real property
described in this instrument should be
sent to:

Name
Address

1917165

REQUISITES VOL. 1653 PAGE 498832

COPY

OFFICE OF THE REGISTRAR
OF TITLES
HENRIEF COUNTY, MINNESOTA
CERTIFIED FILED ON

FEB 8 1979

Apr 9 12 33 PM

REGISTRAR OF TITLES
DEPUTY

RETURN TO:

GARRY STUSSE
ENGINEERING DIVISION
CITY OF BLOOMINGTON
2215 W. OLD SHAKOPEE RD.
BLOOMINGTON, MINN. 55431

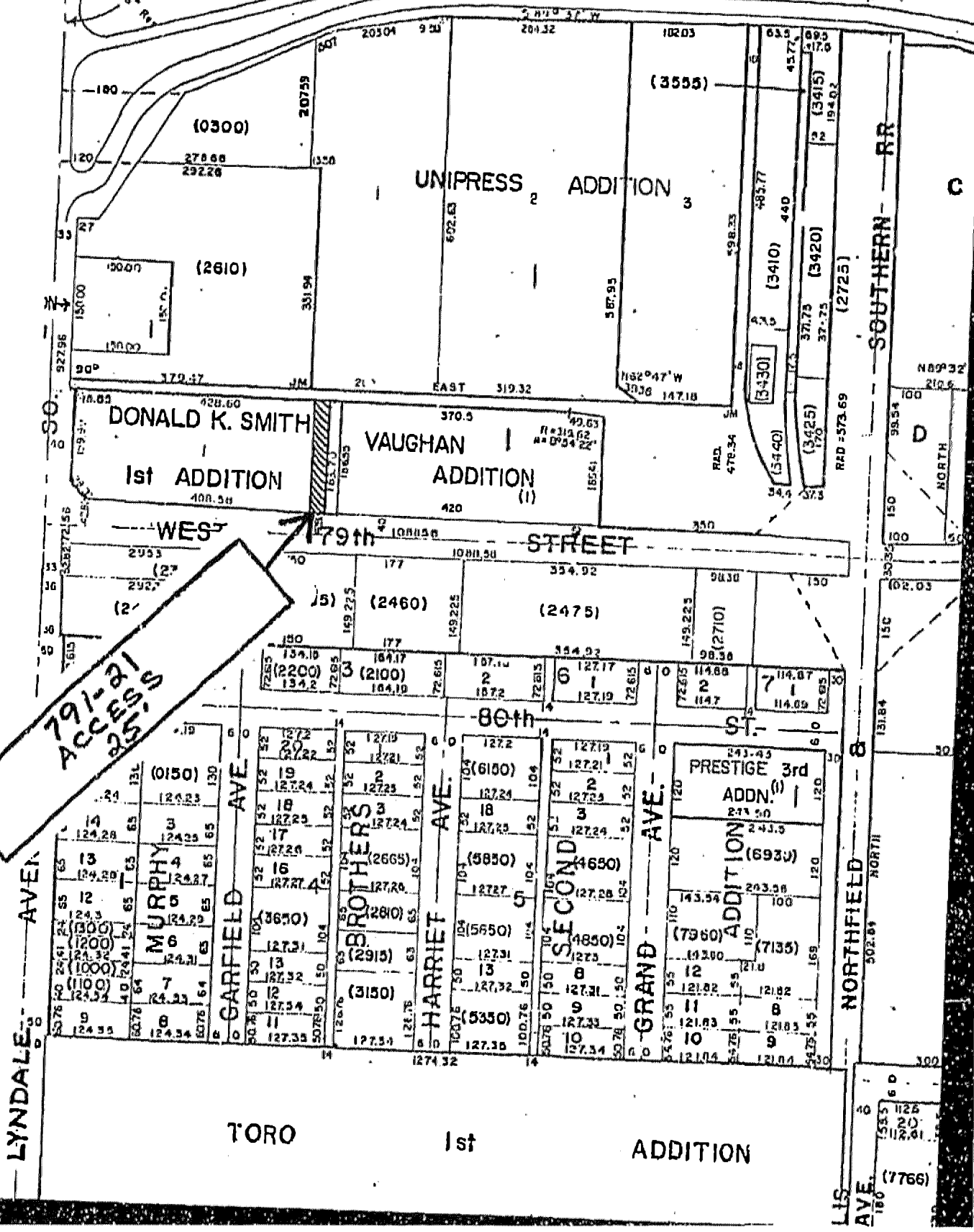
State of Minnesota, }
County of HENRIEF }
The foregoing instrument was acknowledged before me
this 2nd day of February, 1979

LYLE L. BERG
NOTARY PUBLIC - MINNESOTA
HENRIEF COUNTY
April 5, 1979
CITY OF BLOOMINGTON
Engineering Division
Department of Public Works
10000 Logan Avenue South
Bloomington, Minnesota 55431

by Donald K. Smith and Delores A. Smith,
(NAME OF PERSON ACKNOWLEDGING) husband & wife
Lyle L. Berg
(SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT)
(TITLE OR BANK)

U.S. INTERSTATE

262G.22



791-281-5
ACCESS
255

LYNDALE AVE.

TORO

1st

ADDITION

NORTHFIELD NORTH

115 AVE. (1766)

DONALD K. SMITH
1st ADDITION

VAUGHAN
ADDITION (1)

(3555)

(0300)

(2610)

UNIPRESS ADDITION

PRESTIGE 3rd
ADDN. (1)

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