



REQUEST FOR BOARD OF ADJUSTMENTS AND APPEALS DISCUSSION

Date: January 10, 2011

Board of Adjustments and Appeals Item: C

Department Approval

City Manager Approval

Item Description: Appeal from Har Mar Mall area residents regarding a property zoning decision made by the City Council on December 13, 2010

1 BACKGROUND

2 On December 13, 2010, the Roseville City Council adopted a new zoning map as part of the overall
3 zoning code update. The new zoning map became effective when published on December 21, 2010. On
4 December 23, 2010, the City Manager received an appeal by the Har Mar Mall neighborhood residents
5 in regards to the rezoning of the southern edge of the Har Mar Mall parking lot near Cub Foods from
6 R-1 Single Family Residential to CB Community Business District.

7 The appeal was based on the following facts:

- 8 1) There was no notice or formal hearing of the rezoning.
- 9 2) A City staff member, in an email acknowledges the City's mistake in the zoning of Har Mar
10 Mall and the subsequent correction of the City's zoning map on the City's website.
- 11 3) Minnesota Statutes 467.357 (3) requires proper notification of any zoning change and a 4/5
12 majority vote to approve a properly noticed change.

13 City staff, along with the City Attorney, has reviewed the appeal and have determined that there is no
14 provision under the new City Code to allow for residents to appeal a decision made by the City Council
15 to the Board of Adjustment and Appeals. (The City Council also serves as the Board of Adjustment
16 and Appeals). Under Chapter 1009.08 Appeals, only decisions of the Variance Board, an
17 administrative ruling of the Community Development Department, or an administrative action
18 approving or denying an application or request related to the zoning code can be appealed to the Board
19 of Adjustment and Appeals. The decision regarding the rezoning of a portion of the Har Mar Mall
20 property on December 13, 2010 was a legislative decision made by the City Council, not an
21 administrative decision, and thus not appealable to the Board of Adjustment and Appeals. A letter to
22 the representatives of the petitioners was sent informing them that the Board of Adjustment and
23 Appeals does not take up appeals to legislative decisions made by the City Council. Instead the
24 Appellants recourse is to seek judicial review of the action pursuant to Minnesota Statutes 462.361.

25 Despite the fact that the previous City Code appeared to allow for appeals to legislative decisions made
26 by the City Council directly to the Board of Adjustment and Appeals, the recently adopted code is in
27 effect and only allows appeals to Variance Board decisions and administrative rulings of the
28 Community Development Department as previously mentioned.

29 It should be noted, however, that the finding by staff that the appeal to a legislative decision by the City
30 Council is not appealable under City Code, is in itself appealable to the Board of Adjustment and
31 Appeals since that finding is an administrative ruling.

32 **STAFF RECOMMENDATION**

33 No action is needed at this time. This case is for informational purposes. If an appeal is received
34 regarding the abovementioned administrative ruling, the Board of Adjustment and Appeals will need to
35 look at the administrative ruling and determine whether staff's determination is correct that under
36 Chapter 1009.08 of City Code a legislative decision made by the City Council is not appealable.

37 **REQUESTED COUNCIL ACTION**

38 No action requested.

39

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: Appeal from Har Mar Mall area residents regarding the rezoning of the Har Mar Mall.
B: Memo from City Attorney regarding procedure for processing appeals.
C: Letter from City Staff to Neil Nelson and J.O. Thompson dated January 5, 2011

Date: December 23, 2010
To: City of Roseville
William Malinen, City Manager

From: Har Mar Neighborhood Residents
Re: Appeal of Rezoning of Har Mar Mall Parking Lot

We respectfully are appealing the decision made by the Roseville City Council on December 13, 2010 eliminating the R-1 zoning of the south end of the Har Mar parking lot. This area was previously zoned R-1 and was changed on December 13, 2010 to Community Business.

We request this appeal based on the following issues.

1. There was no notice or formal hearing of this rezoning.
2. The attached e-mail from Joel Koeppe (GIS Technician) acknowledges the City's mistake in the zoning of Har Mar Mall and the subsequent correction of the zoning map on the City of Roseville's website.
3. Minnesota statute 467.357 -- Subd. 3 (pages 4-5), requires proper notification of any zoning change and a 4/5 majority vote to approve a properly noticed change.

Sincerely,

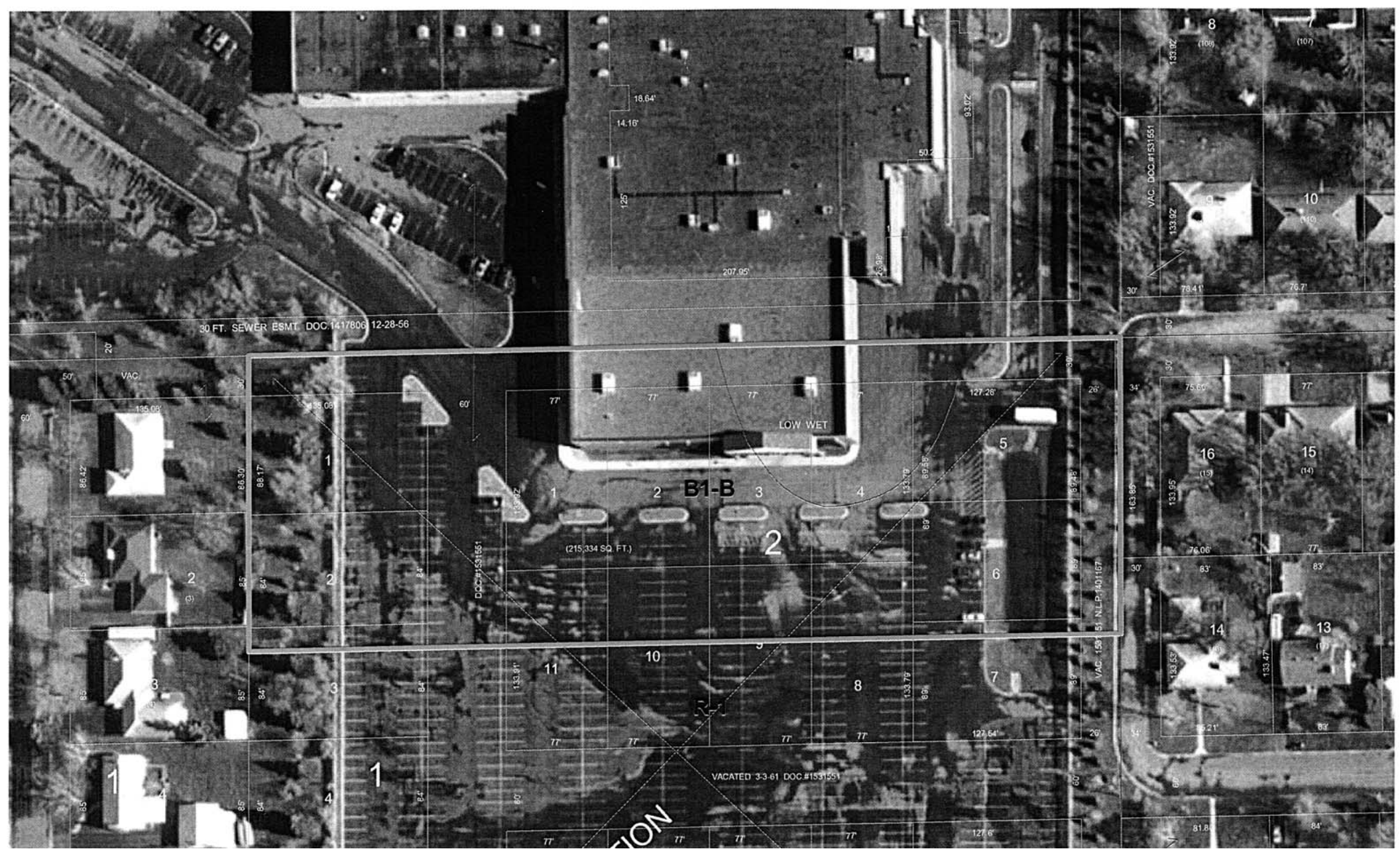
Har Mar area residents

Contact people –

Neil Nelson
1442 Ryan Ave.

J.O. Thompson
2008 Asbury St. N.

Attached: Map of Zoning showing R-1 Area
E-Mail from Joel Koeppe



30 FT. SEWER BSMT. DOC.1417806 12-28-56

LOW WET

B1-B

(215,334 SQ. FT.)

VACATED 3-3-61 DOC.#1531551

VAC. DOC.#1531551

VAC. 1531551 N.L.P. 1401167

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(108)

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(19)

(14)

(1)

(1)

18.64'

14.16'

125'

207.95'

50.2'

93.07'

13.93'

135.92'

133.92'

78.41'

76.7'

75.66'

133.95'

76.06'

133.55'

75.21'

81.8'

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DOC.#1531551

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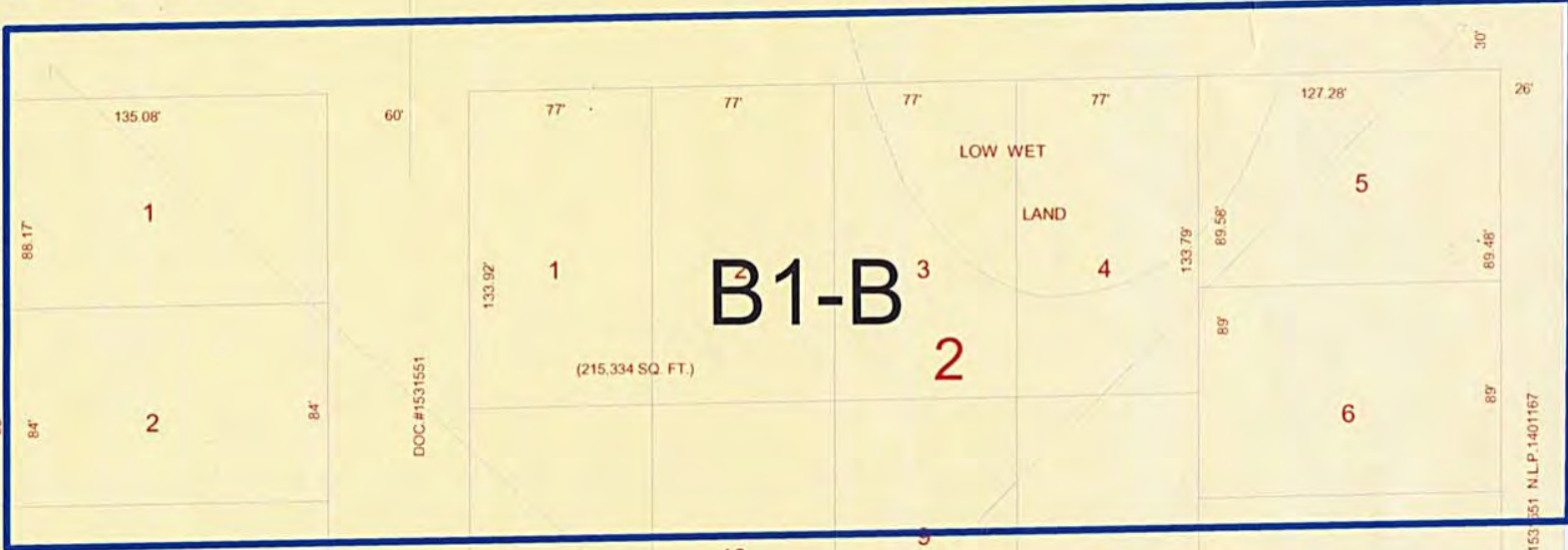
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SC

30 FT. SEWER ESMT. DOC.1417806 12-28-56



B1-B

(215,334 SQ. FT.)

LOW WET

LAND

DOC #1531551

VAC. 153 351 N.L.P.1401167

VACATED 3-3-61 DOC.#1531551

R1

ADDITION

VAC. DOC.#1531551

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30' 78.41'

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B1-B

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ADDITION

R1

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89.19'

34'

81.80'

134.09'

10
(44)

From: Cindy Schwie
Date: May 25, 2010 12:28:45 PM CD I
To: Joel Koepp <joel.koepp@ci.roseville.mn.us>
Cc: Pat Trudgeon <pat.trudgeon@ci.roseville.mn.us>, Thomas Paschke <thomas.paschke@ci.roseville.mn.us>, AmyIhlanWork <amy@briollaw.com>
Subject: Re: Online Form Submittal: Contact Planning Commission

Joel,

Thank you for your quick response and for updating the current zoning map and yes, this does reflect the copies that we have of the current zoning. Will the proposed zoning map be replaced with the updated current information?

Thank you!
Cindy

On May 25, 2010, at 11:17 AM, Joel Koepp wrote:
Cindy,

Please find attached a revised Current Zoning Map. I consulted our mylar copy from 1979 that we have in the office, and it shows the B1B and R1 zoned areas you described, so I have edited the zoning map to reflect this. I will continue searching our historical records, but thus far I have not found any ordinance rezoning the entire property to SC as it was shown previously. Let me know if this new map matches the ones you have, and I will promptly update the PDF map on the website.

Thank you for directing our attention to this. For any questions you might have on the details of the new proposed zoning districts, please contact our City Planner Thomas Paschke at the email address above or by phone at 651-792-7074.

Best regards,

Joel

Joel A Koepp
GIS Technician
City of Roseville
2660 Civic Center Dr
Roseville, MN 55113
Tel: 651.792.7085

From: support@civicplus.com
Date: May 24, 2010 9:41 PM
Subject: Online Form Submittal: Contact
Planning Commission
To: *RVPlanningCommission
<*RVPlanningCommission@metro-inet.us>

The following form was submitted via your website: Contact Planning
Commission

Name:: Cindy Schwie

Address:: 1383 Ryan Ave. W.

City:: Roseville

State: : MN

Zip:: 55113

Home Phone Number::

Daytime Phone Number::

Please Share Your Comment, Question or Concern: I have a concern about the upcoming meeting addressing the changes to the city code regarding zoning. Looking at Roseville's web site that shows the current zoning there is a glaring error with regards to Har Mar Mall's zoning. Har Mar is not completely zoned SC. I would be happy to supply you with copies of the current zoning of SC, B1B and R1. Before any vote is taken I would like the maps to reflect the proper zones.

Additional Information:

Form submitted on: 5/24/2010 9:41:45 PM

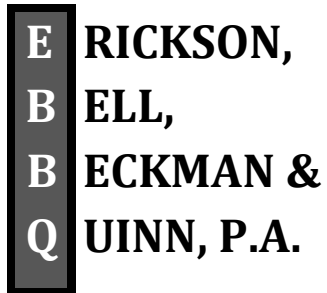
Submitted from IP Address:

Form Address:

Confidentiality Statement: The documents accompanying this transmission contain confidential information that is legally privileged. This information is intended only for the use of the individuals or entities listed above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this information in error, please notify the sender immediately and arrange for the return or destruction of these documents.

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[<CurrentZoningMap.pdf>](#)



1700 West Highway 36
Suite 110
Roseville, MN 55113
(651) 223-4999
(651) 223-4987 Fax
www.ebbqlaw.com

Attachment B

James C. Erickson, Sr.
Caroline Bell Beckman
Charles R. Bartholdi
Kari L. Quinn
Mark F. Gaughan
James C. Erickson, Jr.

Robert C. Bell – *of counsel*

TO: Mayor Roe and Councilmembers

FROM: Charles R. Bartholdi

RE: Land Use Appeals
Our File No: 1011-00196

DATE: January 5, 2011

As I indicated in my previous memorandum to you, the following three Land Use Appeals have been received by the City:

1. Appeal by “members and property owners of Woods Edge Homeowners Association” to the decision to change the zoning of the adjacent parcels at 3253 and 3261 Old Highway 8 from Low Density Single Family Residential (R-1) to High Density Residential (HRD-1) (“Woods Edge Appeal”).
2. Appeal by the “property owners abutting/surrounding the parcels at 3252 and 3261 Old Highway 8” to the decision to deny the petition to amend the Roseville Comprehensive Plan to recommend Medium Density Development with future zoning to be of density to greater than R-6 for 3252 and 3261 Old Highway 8 (“Old Hwy 8 Appeal”).
3. Appeal by Har Mar neighborhood residents to the decision to eliminate the R-1 zoning of the south end of the Har Mar parking lot (“Har Mar Neighborhood Appeal”).

As a result of the adoption of the New Zoning Map and Code on December 13, 2010 and publication on December 21, 2010 (“New Zoning Code”), the Board of Adjustments and Appeals no longer hears appeals relating to City Council land use decisions (See Section 1009.08). Section 1002.06A.2. of the New Zoning Code provides that the Community Development Department is to interpret the provisions of the Code. Following the delivery of my prior memorandum, the Community Development Department reviewed the Appeals, as required by Section 1002.06, and determined that the Woods Edge Appeal and Har Mar Neighborhood Appeal are appeals of City Council land use decisions and, consequently, are not reviewable by the Board of Adjustments and Appeals. Therefore, only the Old Hwy 8 Appeal needs to be considered by the Board of Adjustments and Appeals.

The Old Hwy 8 Appeal is an appeal of an administrative decision. Section 1009.08 of the New Zoning Code provides that such administrative decisions are appealable to the City Council,

acting as the Board of Adjustments and Appeals. Therefore, this appeal should proceed as follows:

1. The Old Hwy 8 Appeal should be referred to the Planning Commission for review at its next regularly scheduled meeting. As indicated to you previously, Minnesota Statutes § 462.354, Subd. 2, provides as follows:

“In any municipality in which the planning agency does not act as the board of adjustments and appeals, the board shall make no decision and any appeal or petition until the planning agency, if there is one, or a representative authorized by it has had reasonable opportunity, not to exceed sixty (60) days, to review and report to the board of adjustments and appeals upon the appeal or petition.”

Consequently, the Board of Adjustments and Appeals should make no decision on this matter until the Planning Commission has had its opportunity to review and report on the Appeal.

2. Following the receipt of the report from the Planning Commission, the Board of Adjustments and Appeals should then hold a public meeting to consider and rule on the Appeal.

CRB/alb

cc: William J. Malinen
Patrick Trudgeon



January 5, 2010

Neil Nelson
1442 Ryan Ave.
Roseville, MN 55113

J.O. Thompson
2008 Asbury St.
Roseville, MN 55113

Dear Sirs:

I have reviewed your appeal request dated December 23, 2010 regarding the recent City Council decision to rezone a portion of the Har Mar Mall property from R-1 Single Family to CB Community Business.

In consultation with the Roseville City Attorney and review of the Roseville City Code, staff has come to the determination that your request for an appeal to the zoning change is not allowed under Chapter 1009.09 (A) of the Roseville City Code. Under Chapter 1009.08 (A) of the Roseville City Code, only decisions of the Variance Board, an administrative ruling of the Community Development Department, or an administrative action approving or denying an application or request related to the zoning code can be appealed to the City Council acting as the Board of Adjustment and Appeals. The decision regarding the rezoning of a portion of the Har Mar Mall property on December 13, 2010 was a legislative decision made by the City Council, not an administrative decision, and thus not appealable to the City Council acting as the Board of Adjustment and Appeals.

At the January 10, 2011 meeting of the Board of Adjustment and Appeals, staff will inform the City Council of this staff determination and there is not expected to be any further action on your appeal request.

Feel free to contact me at (651) 792-7071 or at pat.trudgeon@ci.roseville.mn.us if you have any questions.

Respectfully,

CITY OF ROSEVILLE



Patrick Trudgeon, AICP
Community Development Director

C: Gateway Washington Inc.
420 Lexington Ave.
#900
New York, NY 10170
(Owner of Har Mar Mall)

Emmes Asset Management Co LLC
2100 Snelling Ave
Roseville, MN 55113
(Property Manager)