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August 3, 2009

Honorable John Hieftje, Mayor
City Council
City of Ann Arbor
100 N. Fifth Avenue
Ann Arbor, MI 48104

Re: The Moravian Development

Dear Mayor Hieftje:

I represent the owners of The Moravian development project. I understand that the City Council at its August 6, 2009 meeting, is scheduled to consider imposing a moratorium on all new development that requires site plan approval, expansion of existing development that requires site plan approval, or zoning changes within the R4C and R2A Zoning Districts in conjunction with the study and revision of the Zoning Ordinance pertaining to those districts. The moratorium shall last for 180 days with possible additional extensions and is focused on the property in the Central Area of downtown Ann Arbor.

Because The Moravian proposal as already been submitted and is an active project, it should be exempt from any prospective moratorium. Unfortunately, as the resolution is presently drafted, it could be interpreted to stop any further consideration of The Moravian PUD which has been before the Ann Arbor Planning Commission on a number of occasions at both formal and informal meetings and is the subject of ongoing negotiations and revisions with the Planning and Development Services Staff.

The Moravian owners have worked in good faith with the City for over a year in various iterations of the project proposal. The processing of The Moravian petition has been delayed, through no fault of the petitioner and in ways that have previously been discussed with the City legal staff. The Moravian owners would not have continued in this good faith manner if they knew that the City was, at the same time it was reviewing and processing The Moravian development plans, preparing to impose a moratorium with The Moravian specifically in mind.

The moratorium, would not pass constitutional muster because it would constitute an impermissible taking by the City under the Fifth and Fourteenth Amendment of the United States Constitution.

Moratoria are not regarded favorably by courts. *Central Advertising Company v. St. Joseph Township*, 15 Mich App 548 (1983). However, they can be a legitimate

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planning tool if they substantially advance a legitimate government purpose. The seminal case on the constitutionality of land use moratoria is the Supreme Court case of *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 301 (2002). The purpose of a moratorium is to maintain the status quo during the process of developing a comprehensive land use plan. However, if the regulation goes too far, it can be an unconstitutional taking. A factual inquiry is required in order to determine whether a taking has occurred. *Tahoe; Penn Central Transportation Company et al v. City of New York*, 438 U.S. 104 (1978).

The stated reasons for the moratorium are merely disingenuous subterfuge for the real reason that some in the City want to preclude The Moravian development, along with other current projects, and perhaps any redevelopment of the property and want to impermissibly change the zoning rules mid-process.

The purported reason to impose the moratorium is to further study the R4C and R2A zoning in the Central Area. However, the areas that are the subject of the purported study have been the subject of numerous past, current, and future planned studies, including but not limited to the A2D2 study, the Downtown Plan, Development Strategies Report, Downtown Residential Taskforce Study and the Central Area Plan. There are perennially zoning districts and specific areas of the City under review yet the City's practice has never been to impose moratoria on areas or districts under review. If the City were to wait until studies are completed to allow development within the study boundaries, there would be quite possibly no new development in the City at all. In fact, the A2D2 study, which is arguably the most comprehensive and dramatic study ever undertaken by the City, was not deemed to warrant a moratorium so it begs the question as to why the R4C and R2A districts are unique in their need for a moratorium while under review. The answer to that question is quite clear in that the proposed moratorium is targeted at preventing specific actively proposed projects, including The Moravian.

It is well settled that municipal zoning must accord with a comprehensive plan. The rationale behind requiring zoning changes to accord with a comprehensive plan is to prevent ad hoc zoning legislation that affects land of a few without proper regard to the needs or design of the community as a whole. The proposed moratorium would conflict with the fundamental land use policies and development plans of the City. Not only is no reasonable governmental interest advanced by the moratorium, the public will be injured by such governmental action by restricting the public's ability to be secure in their own property rights and by precluding additional housing options. In addition, such moratorium is designed to protect competing economic interest of neighboring rental owners. The purpose of the moratorium clearly is to delay or prohibit The Moravian owners from developing their land. This is discriminatory and constitutionally impermissible.

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The Moravian owners believe a moratorium would be an impermissible taking of their valuable property rights and request that the City not adopt a moratorium, or if there is one adopted, that its submitted development PUD plan as it may be amended be expressly excluded from the moratorium. If The Moravian project and the underlying land is not excluded, it will be necessary for The Moravian owners to consider their remedies to protect their valuable property rights.

The Moravian owners desire to continue to work with the City in the good faith manner that has been demonstrated as recently as this week's meeting with Planning Staff, and hope that the City realizes that this letter is necessary to communicate The Moravian owners' strong views against a moratorium.

Very truly yours,



Peter H. Webster

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