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December 9, 2010

Ms. Ann Pieper-Eisenbrown
Chair, Historic Preservation Commission
Room B-11, City Hall

Re: Jackson Street LLC's request for recusal of a Commission member

Dear Ms. Pieper-Eisenbrown:

You have asked us to review a December 3, 2010, letter from the attorneys for Jackson Street LLC in regard to a public hearing scheduled for Monday, December 13, 2010, regarding its application for a certificate of appropriateness for a proposed Marriott Hotel in the downtown historic preservation district. Specifically, you have asked about the law in regard to the request for Commission member Alderman Robert Bauman to recuse himself from participation in the Commission's hearing, deliberations and voting on this matter. We now respond.

Generally, recusal is an individual decision for each Commissioner; it is not a decision for the Commission.

We note that Commissioner Nemec has previously chosen to disqualify herself from participation in this matter due to her prior direct professional participation (for monetary compensation) in the development of plans for this site. Her action, taken for reasons that are different from the allegations here, are not a precedent. She had the right to do this, as does Commissioner Bauman.

Second, upon the information available to us, we can see no issue which implicates either the State or City Code of Ethics.

Third, the law of due process requires impartial decision-makers "to ensure both sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process." Our Supreme Court has advised that a Commission member who has prejudged a matter should recuse oneself, while one who simply has a predisposition need not. Marris v. City of Cedarburg, 176 Wis. 2d 14, 498 N.W. 2d 842 (1993).


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The letter from counsel for Jackson Street LLC makes certain allegations against Commissioner Bauman. We have talked to Commissioner Bauman and he disputes the allegations. Under these circumstances, we do not believe it is necessary for the Commissioner to recuse himself.

Very truly yours,



GRANT E. LANGLEY
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