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September 9, 2008

Martha Brown, Deputy Commissioner
Department of City Development
809 North Broadway
Milwaukee, WI 53202

Re: Goll House Historic Structure Designation and Certificate of
Appropriateness

Dear Ms. Brown:

Issue.

You asked for our opinion regarding the jurisdiction of the City's Historic Preservation Commission ("HPC") with respect to the Goll House Mansion located at 1550 North Prospect Avenue. In particular you asked what limitations apply to the HPC's authority and jurisdiction concerning issuance of a Certificate of Appropriateness ("COA") for a project contemplated at 1550 North Prospect Avenue (owned by New Land Enterprises, LLP, "NLE") that would involve:

- (1) Rehabilitation and restoration of the Goll House Mansion;
- (2) Construction of a Connector Piece to connect the Goll House Mansion with a new Condo Tower proposed for the back yard of 1550 N. Prospect; and
- (3) Construction of a new Condo Tower in the backyard of, and east of, the Goll House Mansion.

Brief Answer.

In this case, the historic designation was only for the Goll House Structure itself (Common Council Resolution 011566), not its "Site" and not any "District" in which it exists. Consequently, the HPC's jurisdiction is limited to the Goll House Structure itself, and specifically, to the exterior of the structure¹.

¹ No COA is needed for interior work at the Goll House. MCO § 308-81-9 and HPC Preservation Topics #2.

Thus, the HPC should be considering how the Project affects the exterior of the Goll House Structure – what will happen to the Structure as a result of the Connector Piece being connected.

The HPC and MCO § 308-81.

The HPC is governed by MCO § 308-81. The City’s website (HPC) says that the HPC “administers Milwaukee’s historic preservation ordinance...which provides certain kinds of legal protections for buildings or sites that have been declared historic by the Common Council².” Note the use of the word “or” in the phrase “buildings or sites.”

Since HPC is governed by MCO § 308-81, and since HPC is responsible for administering § 308-81, HPC is bound by and must adhere to § 308-81.

Per the City’s website, HPC’s purpose is to “[p]rotect, enhance and perpetuate structures and districts of special architectural character or special historic interest or value which represent or reflect elements of the City’s cultural, social, economic, political and architectural history.” City – HPC- Legislative Research Center. That is echoed by MCO § 308-81-1, Purpose and Intent, which declares it a matter of public policy to protect “improvements of special architectural character...”

Per MCO § 308-81-2-h:

“Historic structure means any *improvement* which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a historic *structure* by the common council.” *Emphasis added.*

The word “[i]mprovement” is defined in MCO § 308-81-2-i as “[a]ny building, structure, place, work of art, or other object constituting a physical betterment of real property, or any part of such betterment.”

Under MCO § 308-81-8, “a structure, site or area” may be nominated for historic designation. Thus, at the beginning, there is a choice. Will the “Structure” or a “Site” be designated, or will an Area be included within a Historic District?

In light of the above, if the HPC and Council designate only a “Structure” as “Historic,” then only that “Structure” is protected by and subject to 308-81.

² See also Preservation Topics #2 that provides that HPC administers § 308-81.

Under MCO § 308-81-8, when a nomination for “a structure site or area” is made, the HPC must consider, not only the application for nomination, but the rights of the owner of the structure, site or area (HPC must “contact the owner...and outline the reasons for and the effects of the designation on the structure, site or area...”; § 308-81-8 preamble) (HPC must hold a hearing on the nomination of the “structure, site or area” and provide notice of such to the owner; 308-81-8-a-1-a).

After a public hearing on the application for nomination of “a structure, site or area,” the HPC makes a recommendation to the City’s Common Council as to whether the “structure, site or area” should be designated historic. MCO § 308-81-8-a-2, b, and c, and § 308-81-7-e. The Council then decides on the “site, structure, or district” designation, and in doing so, the Council must “balance the interest of the public in preserving the affected property and the interest of the owner or owners in using the property for his or her purposes.” MCO § 308-81-8-c.

Per MCO § 308-81-8-c, if, after balancing the public’s interest and the Owner’s interest, the Council approves the designation, the Council then approves a Study Report “for the proposed historic site, structure or district” “including the preservation guidelines for the site, structure or district.”

In the case of the Goll House, the Council did approve a Study Report and Study-Report Guidelines, and the Council said that those Guidelines “shall apply to this structure.” Council File 011566. Emphasis added. Thus, the Study-Report Guidelines only apply to the Structure.

Per MCO § 308-81-8-d and § 308-81-7-e, after the Council approves a designation of a site, structure or district, then notice of the designation must be recorded in the Milwaukee County Register of Deeds Office. In order to record such a notice, the Register of Deeds requires a legal description.

The above is echoed by the HPC’s “Preservation Topics #2” (on the City’s website) which says that the HPC administers § 308-81, which was adopted to protect “buildings or sites” (note the use of the word “or”) the Council declares “historic,” and which provides that “[o]nce the structure, site or district has been designated as locally historic by the Common Council, the structure, site or district is under the protection of the ordinance and no changes may be made to the exterior unless the owner first obtains a ‘Certificate of Appropriateness’ from the [HPC].” See also MCO § 308-81-7-e and 308-81-9.

So, in the case of the Goll House, since the Council designated the Goll House Structure historic, as indicated, the Structure is protected by 308-81, and NLE, as Owner of the Structure, cannot make changes to the exterior of the Structure unless NLE obtains a COA. *Id.*

MCO § 308-81-2-b defines “Certificate of Appropriateness” (i.e. COA) as:

“A certificate issued by the commission approving construction, reconstruction, rehabilitation or demolition of a historic structure or structures within a historic site or district.” Emphasis added.

Based on the above, where the Structure is historic, but not in a historic “Site” or in a historic “District,” the COA is to approve “construction, reconstruction, rehabilitation or demolition of a historic structure.” *Id.*

MCO § 308-81-7-f provides that the HPC issues COA’s “that will allow or deny the alteration, demolition or exterior change to any designated historic site or structure or improvement within a historic district.” (Emphasis added).

MCO § 308-81-9 pertains to issuance of COA’s. Per the preamble to 308-81-9, no owner “in charge of a historic site, historic structure or an improvement within a historic district” may “reconstruct or alter all or any part of the exterior of such property” (i.e. the Historic Site, Structure, or District, as the case may be) “or construct any improvement upon such a property” (i.e. the Historic Site, Structure, or District, as the case may be) “or demolish such property” (i.e. the Historic Site, Structure, or District, as the case may be) unless the HPC issues a COA³.

MCO § 308-81-9-b specifies what the HPC “shall consider” when reviewing a COA application, to wit:

“b-1. Whether, in the case of a designated historic site, structure or district, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done; and

b-2. Whether, in the case of construction of a new improvement upon a designated site or within a historic district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site; and

b-3. Whether, in the case of any property located in a historic district the proposed construction, reconstruction, exterior alteration, or demolition conforms to the objectives of the historic preservation plan for such district as duly adopted by the common council.”
Emphasis added.

³ Per MCO § 308-81-13, an owner is not prohibited from making changes to exterior or architectural features pursuant to order of any governmental agency or pursuant to Court judgment to remedy emergency conditions that are dangerous to life, health or property.

Only 308-81-9-b-1 pertains to designated Historic Structures. Sec. 308-81-9-b-2 does not apply to the Goll House because 308-81-9-b-2 relates to (i) Common-Council-***designated*** Historic Sites as contemplated by 308-81-2-g-3, 308-81-8, and 308-81-9-b-2, and (ii) Common-Council-***designated*** Historic Districts as contemplated by 308-81-2-f, 308-81-8, and 308-81-9-b-2. Sec. 308-81-9-b-3 likewise does not apply to the Goll House because 308-81-9-b-3 also relates only to Common-Council-***designated*** Historic Districts as contemplated by 308-81-2-f, 308-81-8, and 308-81-9-b-3.

Thus, in light of the above, in reviewing NLE's COA application, the HPC should only consider 308-81-9-b-1:

"b-1. Whether, in the case of a designated historic ...structure..., the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done..."

Per MCO § 308-81-9-d, a hearing on NLE's COA application should proceed as follows:

"d. Hearing. If upon a hearing by the commission it appears that the proposed changes in the application..."

(i.e. changes to the exterior of the Goll House Structure)

are consistent with the character of the individual property or those of its district, the commission shall immediately direct the commissioner of city development to issue a certificate to the applicant."

See, also, Preservation Topics #2 which instructs the Owner to include with its COA Application "sketches, drawings, photographs, or any other material that you feel will **help [HPC] understand the proposed changes to the structure.**"

MCO § 308-81-9-d goes on to say:

In making its determination on any application under this section, the commission shall apply the criteria set forth in sub. 10." Emphasis added.

Due to 308-81-9-d's cross-reference to sub. 10, the HPC must, in determining whether to issue the COA to NLE, also consider (in addition to 308-81-9-b-1 quoted above), the criteria and guidelines in 308-81-10 as the same may bear upon the exterior of the Goll House Structure.

MCO § 308-81-10 provides as follows:

“10. GUIDELINES FOR REHABILITATION. In determining whether to issue a certificate of appropriateness for rehabilitation, the commission shall consider and may give decisive weight to any or all of the following:

a. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the exterior of a building, structure or site and its environment.

b. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

c. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier or later appearance shall be discouraged.

d. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

e. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

f. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different elements from other buildings or structures.

g. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken without a certificate of appropriateness.

h. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.

i. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood, or environment.

j. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.”

When considering the 308-81-10 Guidelines, along with 308-81-9-b-1, in case of the Goll House Historic Structure, the HPC should also keep in mind the purpose of 308-81, as articulated in MCO § 308-81-1-a-h, to wit:

“a. Effect and accomplish the protection, enhancement, and perpetuation of such improvements and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history.” (In this case, protecting the designated Goll House Structure).

“b. Safeguard the city's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.” (In this case, safeguarding the City's historic and cultural heritage as embodied in the designated Goll House Structure).

“c. Stabilize and improve property values.

d. Foster civic pride in the beauty and noble accomplishments of the past.

e. Protect and enhance the city attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

f. Relate municipal programs in preserving housing and revitalizing commercial areas to the objectives of historic and architectural preservation.

g. Educate the public regarding the desirability of landmark designation and historic preservation as an enhancement of the quality of life.

h. Aid and assist individuals and public entities in the nomination of their properties to the national register of historic places.”

MCO § 308-81-9-e says that the HPC “may, at its discretion, direct issuance of a [COA] conditioned upon applicant’s acceptance of certain changes in his plan.” See Preservation Topics #2: (i) HPC may issue COA “conditioned upon the applicant’s written agreement to make specified changes in the project necessary to bring it into conformance with the intent of the designation;” and (ii) HPC “may approve the application, give approval conditioned on the owner’s willingness to make specified changes, or refuse the request.”

Any HPC-suggested change must, however, respect and recognize what was designated to begin with, and what is thus protected. That is, the HPC must recognize the limitations on its jurisdiction, including those referred to herein.

Study Report

Our analysis and opinions above are also supported by the Study Report itself. Per the Study Report, in response to a designation requested by Donna Schlieman:

- the historic designation is for the “Goll House” (Study Report § I), with the Historic Classification being the “Structure” (§ III), that happens to be located at 1550 N. Prospect Ave. (§ II)⁴.
- Study Report § VI, entitled “Physical Description” describes the “Goll House” as “one of the finest houses,” a “stately residence,” a “mansion,” a “grand house,” and an “exceptional structure” that, in 2002, was “flanked to the north by a large, seven-story, 1950s apartment building and immediately to the south a hi-rise condominium” then under construction.
- Study Report § VII, entitled “Significance,” discusses the “Goll House” saying “[t]he Goll house is historically important...” and that “[t]he mansion is ...significant...”
- Study Report § VIII entitled “History,” discusses the architecture of the “Goll house,” characteristics of that building, the family that first owned that building, and the architects who designed that building.
- Study Report § IX was the Staff Recommendation of Historic Designation - that the Goll House be designated a Historic Structure. It was recommended because:
 - the design of the House “reflects the zenith of residential architecture in Milwaukee at the end of the nineteenth century.” Pg. 10.

⁴ A legal description is associated with 1550 N. Prospect Ave. as with all addresses. And, recording the Historic-Structure Designation with the Register of Deeds requires a legal description. MCO § 308-81-8-d.

- “the house is one of the city’s finest and earliest examples of Elizabethan/Jacobean Revival style architecture.” Pg. 10.
- “the designers of the house, Ferry and Clas were some of the city’s best architects . . .” Pg. 10.
- “the house is one of the grand structures associated with the Prospect Avenue Residential district . . .” Pg. 11.
- The “Addendum” at Study Report page 2 refers to the “overall historical and architectural significance of the building.”
- Study Report § X, the Preservation Guidelines (the “Study Report Guidelines”), contains the following preamble:

“The following preservation guidelines represent the principle concerns of the Historic Preservation Commission regarding this historic designation. However, the Commission reserves the right to make final decisions based upon particular design submissions. Nothing in these guidelines shall be construed to prevent ordinary maintenance or the restoration and/or replacement of documented original elements.”

You informed us that, generally speaking, the § X Study Report Guidelines are “boiler plate” - generic guidelines similar to other preservation guidelines that the HPC recommended and that the Common Council approved for other historic structures, other historic sites, and other historic districts. *See* examples in Common Council Resolution File Nos. 020753 (St. Mary’s Hospital), 030388 (U-Club), and 000671 (Ward Yard).

Based on various dictionary definitions of the word “guideline,” generally speaking, guidelines are to provide guidance for decision-making while allowing discretion or leeway in interpretation and application.

And, as indicated, the preamble to the Study Report Guidelines itself contains the provision that “The Commission reserves the right to make final decisions based upon particular design submissions.”

Consequently, the HPC should definitely take the Study Report Guidelines into consideration *vis-à-vis how NLE’s Project may affect the exterior of the Goll-House Structure*, but the Study Report Guidelines are not mandates.

HPC must, in any event, respect the relevant provisions of MCO § 308-81, being local law. Per 308-81-7-e⁵, once the Goll-House Building was designated by the Council as a Historic Structure, that structure “shall be subject to all provisions of...” § 308-81.

National District Listing.

The Goll-House Structure (locally designated a Historical Structure by Milwaukee’s Common Council), is also within the PROSPECT AVENUE MANSIONS HISTORIC DISTRICT (the “PAM District”). See Preservation Topics # 3 also available at City website. The PAM District is 1363-1551 N. Prospect Ave. and that District is on the State and National Registers of Historic Places. But, we understand the PAM District was never designated a Historic District by Milwaukee’s Common Council. See MCO § 308-81-2-f-4, and 308-81-2-g-3, and 308-81-8.

HPC Preservation Topics #3 explains that, unlike Common-Council-listed-Historic Designations under MCO 308-81:

“Listing in the National Register of Historic Places imposes few restrictions on a property. A National Register property may be demolished, altered or sold just like any other property without any special review or approval required.”

Per information on the Wisconsin Historical Society website, if private property “is listed in the State Register and the National Register” the private owner is not restricted with what the owner can do with the property. There is no requirement to restore or preserve the property. The property is not protected from demolition. “The private property owner is free to sell, alter or demolish the property.”


While NLE may not have been obligated to obtain any special approvals because of the Goll House being in a PAM District, you have informed us that NLE nonetheless engaged in discussions with the National Park Service, the Wisconsin State Historical Society, the National Trust for Historic Preservation (“NTHP”), and the Milwaukee Preservation Alliance (“MPA”); and, that NLE entered into a Memorandum of Agreement (“MOA”) with NTHP and MPA pursuant to which NTHP and MPA support NLE’s project – details of which are set forth in the MOA – “because it affords the best opportunity for saving and restoring the Goll House.”

Please be aware that our office, on September 5, sent a letter to the Wisconsin Historical Society, informing it of the Joint CPC-HPC meeting coming up on September 15, of materials available for review about the Project on the City’s website, and explaining our understanding that the Wisconsin Historical Society does not play a statutory role in negotiating or approving NLE’s Project.

⁵ Sec. 308-81-7 is entitled “Functions, Powers And Duties” and discusses the HPC.

Martha Brown, Deputy Commissioner
September 9, 2008
Page 11

Please call if you have questions or comments.



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Department of City Development

Redevelopment Authority
City Plan Commission
Historic Preservation Commission
NIDC

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

September 5, 2008

Mr. Grant Langley
City Attorney
City Hall, Room 800

Dear Mr. Langley:

I am writing to request a City Attorney opinion regarding the jurisdiction of the City's Historic Preservation Commission ("HPC") with respect to the Goll House located at 1550 North Prospect Avenue. Common Council file #011566 designated the Goll House as a locally-designated historic structure.

In particular, we seek your opinion regarding the HPC's authority and jurisdiction concerning issuance of a Certificate of Appropriateness ("COA") for a construction project contemplated at 1550 North Prospect Avenue that would involve:

- (1) Rehabilitation and restoration of the Goll House;
- (2) Construction of a building addition connecting the Goll House and a new condominium tower proposed for the back yard of 1550 N. Prospect; and
- (3) Construction of a new condominium tower in the backyard of, and east of, the Goll House.

The Historic Preservation Commission and City Plan Commission will consider this project at a meeting at 1:30 pm Monday, September 15, 2008. Thus we would greatly appreciate prompt response to this request.

Please contact me at ext. 5810 if you require any further information. Thank you for your assistance.

Sincerely,

Martha L. Brown
Deputy Commissioner