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**CITY OF MILWAUKEE**  
**Office of the City Attorney**

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May 30, 2012

Mr. James R. Owczarski  
City Clerk  
City of Milwaukee  
200 East Wells Street, Room 205  
Milwaukee, WI 53202

Re: Interim Historic Designation – “Sydney Hih” Complex

Dear Mr. Owczarski:

In your e-mail dated May 23, 2012 to the City Attorney's Office, you posed three questions and requested a formal opinion in response to those questions. The questions relate to an application for interim historic designation of the buildings located at 300-318 W. Juneau Avenue (the “Sydney Hih Complex”). The Sydney Hih Complex is actually made up of four adjacent, connected buildings. The easternmost building located on the corner of North Third Street and West Juneau Avenue is sometimes referred to as the Nicolas Senn Building (the “Senn Building”). Your questions and our responses are as follows:

**1. As you know, s. 320-21-13-b of the Code sets two different time requirements for the Historic Preservation Commission (HPC) to hear application for interim designation: 15 days in cases where a demolition permit has been applied for and 45 days where a demolition permit has not been applied for. It is my understanding that a raze order has been issued for this structure. Which time standard should be applied in this case?**

Pursuant to the Milwaukee Code of Ordinances (“MCO”), a hearing for interim designation by the HPC shall be held within 15 days of receiving the petition for interim designation in situations where a demolition permit has been applied for under s. 200-26-1. MCO 320-21-13-b-1. In situations where there has been no application for a demolition permit, the hearing shall be held within 45 days after receipt of the petition. MCO 320-21-13-b-2. According to the Condemnation Section of the City's Department of Neighborhood Services, there has been an application for a demolition permit for the Sydney Hih Complex. Therefore, the 15-day timeframe applies in this case.

**2. Section 320-21-9-g of the Code states that if the Common Council has not decided whether to grant historic status to a site, district, or structure within two years of the date of application for designation, the application is deemed “terminated.” Section 320-21-9-h prohibits reconsideration of an application for designation unless, among other requirements, two years have passed since the application was “dismissed or denied.” I note here the difference in terms. Does this mandatory two year hiatus apply in this instance?**

In order to answer this question, we must first review some procedural history. In January of 2009, Gail Fitch filed an application for historic designation. From the first page of the HPC’s September 2009 Study Report, we understand that Fitch’s 2009 application specifically covered only the structure of the Senn Building and not the three adjacent buildings to the west that also make up the Sydney Hih Complex. After reviewing Fitch’s application, the HPC nominated the Senn Building for historic designation on September 21, 2009. The nomination was introduced to the Common Council as File Number 091436 and assigned to the Zoning, Neighborhoods and Development Committee (“ZND”) on March 2, 2010. On March 19, 2010, ZND held a hearing regarding the Senn Building nomination, but decided to hold the matter over to the call of the chair so that ZND could hear from the building owner before making a decision. On April 27, 2010, ZND held a second hearing where the owner was present and stated that he did not want the building designated as historic. Again, ZND held it to the call of the chair. No further action was taken on the matter until May 15, 2012, when the current Chairman of ZND placed the matter on the agenda. The matter was again held to the call of the chair and no final decision was made on the nomination of the Senn Building.

As you know, holding a matter to the call of the chair is a parliamentary procedure in which a matter is postponed until the Chairperson brings it back at a future meeting. Under Milwaukee Common Council procedural rules, a matter held to the call of the chair can remain open indefinitely in committee until placed on file or unless law or another procedural rule supersedes and terminates the matter. According to Robert’s rules of parliamentary procedure, when there is a law that conflicts with the parliamentary procedural rules, it is the law that is applied rather than the rule. *Robert’s Rules of Order Newly Revised*, 10<sup>th</sup> ed. 2000, at p. 16. Here, a city ordinance supersedes the procedural rules and terminated the nomination for historic designation for the Senn Building.

Under MCO 320-21-9-g, a nomination by HPC for historic designation is terminated if final action is not taken within two years of the date of the nomination. The Code reads as follows:

- g. In cases where the [HPC] has nominated a site, structure or area for consideration for historic designation, final action, in accordance with this

subsection, shall be taken within 2 years of the date of nomination. If final action is not taken, the nomination of the site, structure or area is terminated.

With regard to the Senn Building, the HPC met on September 21, 2009 and voted to recommend that the Common Council designate the building as historic, thereby nominating the building for historic designation pursuant to MCO 320-21-9-c. No final action was taken on that nomination within two years because the nomination remained in ZND without any final action by ZND or the Common Council. Therefore, the nomination was terminated by operation of law under MCO 320-21-9-g on September 21, 2011. Despite the parliamentary procedure rule that allows items to be held to the call of the chair of a committee indefinitely, MCO 320-21-9-g supersedes that rule. Holding the matter in committee does not toll, or suspend, the two year deadline.

MCO 320-21-9-h restricts when a nomination for historic designation can be renewed after it is terminated. The Code reads as follows:

h. Once a nomination for historic designation has been dismissed or denied, the same site, structure or area may not be renominated unless one of the following conditions is met:

h-1. Two years have passed since the nomination was dismissed or denied. In such cases, the renomination shall be considered a new nomination for the purposes of this section. *In cases where a nomination is terminated pursuant to par. g, the 2 years shall be counted from the date of the termination.*

h-2. *The commission is presented with substantial new evidence that could not reasonably have been presented at the previous hearing.* In such cases, this evidence, including photographs, shall be accompanied by an appropriate application form. No renomination shall take place without the affirmative vote of a majority of the members of the [HPC].

MCO 320-21-9-h (emphasis added). In this case, under MCO 320-21-9-g, the nomination of the Senn Building was terminated by application of law due to there being no final action on the matter by September 21, 2011. Although the language in the introductory paragraph of MCO 320-21-9-h uses the terms “dismissed” and “denied” rather than “terminated” as in MCO 320-21-9-g, one can assume that a nomination that was terminated under MCO 320-21-9-g due to lack of final action is considered to be “dismissed” or “denied” based on the language in MCO 320-21-9-h-1 which specifically explains “[i]n cases where a nomination is terminated pursuant to par. g, the 2 years shall be counted from the date of termination.” Applying these Code sections to the Senn Building, the nomination was terminated on September 21, 2011 due to lack of final

action by the Common Council before the two year deadline. Due to MCO 320-21-9-h-1, there cannot be a re-nomination of the Senn Building until September 22, 2013.

The Code also allows a new petition to be introduced where there is "substantial new evidence that could not reasonably have been presented at the previous hearing." MCO 320-21-9-h-2. In comparing Fitch's 2009 petition with Erin Dorbin's May 23, 2012 Petition for Interim Designation, it does not appear that there is any substantial new evidence presented or any explanation that such additional evidence could not reasonably have been presented in the previous hearings for the 2009 application. Indeed, Dorbin's Petition relies heavily upon the 2009 materials as they were then presented, including the 2009 HPC Study Report and Fitch's 2009 Petition. Dorbin states that the 2012 Petition "is meant to re-open the discussion concerning the Senn Building's designation status that was originally submitted by Gail Fitch in 2009." The 2009 Study Report ended its description of the historical significance of the Senn Building with the 1980s. Dorbin's Petition expands a bit beyond the 1980s, but provides no reason why this evidence could not have been reasonably presented in 2009. Ultimately, whether this requirement is met is a decision subject to the vote of the HPC. However, MCO 320-21-9-h-2 suggests that the substantial new evidence must accompany the new application along with an explanation as to why that evidence could not reasonably have been presented in the previous hearings. Dorbin's 2012 application does not meet these requirements. There is nothing though that prohibits Dorbin, or anyone else, from re-submitting the application with that information provided. HPC would then have to determine whether the new application meets these requirements and whether to re-nominate the Senn Building.

Despite the prohibitions on re-nominating the Senn Building under MCO 320-21-9-h, the prohibitions do not affect the three other buildings directly west of the Senn Building that also make up the Sydney Hih Complex since those three buildings were not included in the 2009 application and nomination. Therefore, Dorbin's 2012 Petition may proceed to the HPC with regard to those three westernmost buildings that make up the Sydney Hih Complex. However, even though Dorbin's Petition may proceed with regard to those three buildings, it appears that from a practical matter, the answer to your third question makes such a procedure moot, given the fact that a raze order was issued for all four buildings that make up the Sydney Hih Complex. This is explained further in response to your third question below.

**3. Given the existence of the aforementioned raze order, would s. 320-21-16 of the Code prohibit interim designation by the HPC? I am unfamiliar with the terms of this raze order, but would note that some of the preservation advocates have questioned whether this structure is dangerous to "life, health or property" and whether the raze order reflects this.**

On April 19, 2012, the Condemnation Section of the City's Department of Neighborhood Services issued an Order To Raze And Remove Building for the Sydney Hih Complex

(the "Raze Order"). A copy of the Raze Order is attached to this opinion. You can see that the Raze Order encompasses all four buildings that make up the Sydney Hih Complex located at 300-318 W. Juneau Avenue. The address is specifically used along with an order to raze and remove the 4-story "multiple use" and "all accessory structures and fixtures."

You asked whether the Raze Order states that the Sydney Hih Complex is dangerous to "life, health or property." The Raze Order was issued pursuant to MCO 218-4 which states:

1. All such unsafe buildings, structures or parts thereof as defined in s. 200-11 or consistent with the conditions specified in s. 218-9-1, *are declared to be a public nuisance, endangering life, limb, health or property*, and shall be repaired and made safe, or razed and removed in compliance with this chapter, as ordered by the commissioner, pursuant to the authority provided in s. 66.0413(4), Wis. Stats.

MCO 218-4-1 (emphasis added). The Raze Order states, "This building is now unfit for human habitation, further occupancy or use and is unreasonable to repair." The term "unfit for human habitation" is defined in MCO 200-11, which is referenced in MCO 218-4, quoted above. By the specific language of the Raze Order, we know that the Commissioner of Neighborhood Services determined that the Sydney Hih Complex met the definition of "unfit for human habitation" in MCO 200-11 and; therefore, under action of MCO 218-4, the Sydney Hih Complex is "declared to be a public nuisance, *endangering life, limb, health or property.*" MCO 218-4-1 (emphasis added).

MCO 320-21-16 does not prohibit interim historic designation of the Sydney Hih Complex. However, such a designation will not prohibit changes to the Complex that are done "pursuant to the order of any government agency . . . for purpose of remedying emergency conditions determined to be dangerous to life, health, or property." MCO 320-21-16. Because the Raze Order was issued, the property owner may raze the Sydney Hih Complex to remedy the unsafe conditions of the Complex, regardless of whether the Complex or any part thereof has been designated as historic. Even if Dorbin's 2012 application for interim historic designation is approved by the HPC and the Common Council, under MCO 320-21-16 of the Code, the historic designation does not prohibit the owner from razing the Complex pursuant to the Raze Order.

In summary, Dorbin's Petition for interim historic designation of the Sydney Hih Complex may proceed to HPC for a hearing with regard to the three westernmost buildings of the Complex only. Because a demolition permit has been applied for, a hearing by the HPC must be held within 15 days of the application. Any application with regard to the Senn Building cannot be introduced until September 22, 2013, or until there is substantial new evidence included in a petition that could not have reasonably been

Mr. James R. Owczarski  
May 30, 2012  
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presented at the previous hearings on that building. While the petition for the three westernmost buildings of the Sydney Hih Complex may proceed to HPC for a hearing on interim historic designation nomination, any such nomination by HPC or even final designation by the Common Council, would not prohibit the demolition of the Sydney Hih Complex under the Raze Order.

Very truly yours,



GRANT F. LANGLEY  
City Attorney



MARY L. SCHANNING  
Assistant City Attorney

MLS:lmc

Enclosure

1033-2012-1334:181315

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# ORDER TO RAZE AND REMOVE BUILDING

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PURSUANT TO SECTION 218-4, Milw. Code

CITY OF MILWAUKEE  
DEPARTMENT OF NEIGHBORHOOD SERVICES  
Condemnation Section  
841 N. Broadway  
Milwaukee, WI 53202



DEPARTMENT COPY

April 19, 2012  
Serial #: 009433661

Recipients:  
SH ACQUISITION LLC, MILWAUKEE ECONOMIC DEVELOPMENT CORP, C/O PATRICK WALSH (R/A), 809 N BROADWAY LLC, MILWAUKEE, WISCONSIN 53202

TO: Owners and Holders of Encumbrances of Record:

SH ACQUISITION LLC

Re: Premises located at **300-318 W JUNEAU AV**  
Taxkey #: 361-0409-100

LEGAL DESCRIPTION: ORIGINAL PLAT OF THE TOWN OF MILW WEST OF THE RIVER IN SECS (20 & 29)-7-22 BLOCK 39 LOT 16 & PART LOT 13 COM SW COR LOT 13-TH N 10'-TH E 60.2'-TH S 7.2'-TH E 15.43'-TH S 1.74'-TH W 74.96' TO BEG SUBJ TO X-WAY EASM'T BIDS #15, #21; TID #48

An inspection of the 4-story, masonry, multiple use located at the above address revealed a deteriorated building. This building is now unfit for human habitation, further occupancy or use and is unreasonable to repair.

1. The conditions requiring the building(s) to be razed and removed include, but are not limited to:

## PRIMARY BUILDING

2. Areas or sections of the foundation walls are defective.
3. Areas or sections of the foundation are defective.
4. Areas or sections of the wall structure are defective.
5. Areas or sections of the roof covering are defective.
6. Areas or sections of the exterior finishes are defective.
7. Areas or sections of the exterior finishes are missing.
8. Areas or sections of the exterior trim are missing or defective.
9. Exterior porch(es) are missing or defective.

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**PLEASE NOTE: See the last page of this order for appeal rights.**  
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10. The building heating appliance(s), or components of these elements of the building, are missing or defective.
11. The building heating distribution system(s), or components of these elements of the building, are defective.
12. The building heating distribution system(s), or components of these elements of the building, are missing.
13. The plumbing system, or components of this element of the building, is defective.
14. The plumbing system, or components of this element of the building, is missing.
15. The plumbing system, or components of this element of the building, is missing or defective.
16. The electrical system, or components of this element of the building, is defective.
17. The electrical system, or components of this element of the building, is missing.

It has been determined that the cost to repair the above-referenced building(s) exceeds 50 percent of the assessed value of the improvements divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin Department of Revenue for the City of Milwaukee, that such repairs are presumed unreasonable, and that this building is a public nuisance.

Therefore, I, Art Dahlberg, Commissioner of Neighborhood Services of the City of Milwaukee, pursuant to the authority of Sec. 218-4, Milw. Code, do hereby order you to secure from entry, raze, and remove the aforementioned 4-story, masonry, multiple use together with all accessory structures and fixtures, and to restore the aforementioned premises to a dust-free and erosion-free condition within twenty (20) days after the service of this order upon you, pursuant to law, and should you fail or refuse to do so, the same will be razed, removed and restored to a dust-free and erosion-free condition by contract or arrangement with private persons or firms, and the costs thereof, plus additional contract administration charges, all of which constitute a lien on the real estate, may be assessed and collected as a special tax under Sec. 218-4, Milw. Code, or be collected personally.

The building(s) must be maintained vacant and secure from entry until you have complied with this order. In the event you do not maintain the building(s) secure from unauthorized entry, this department will maintain the building(s) secure and assess any cost against the real estate. Any use will be a violation of Sec. 200-11-5-b, Milw. Code, and any use will be subject to prosecution. Section ATCP 134.09 prohibits the advertising for rental of condemned properties. No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation. Before the building(s) may be razed and removed, appropriate permits must be obtained from the Condemnation Office, which is located in Room 105, Municipal Building, 841 North Broadway, Milwaukee, Wisconsin. Before the building(s) can be razed and removed, appropriate soil erosion control measures must be installed in accordance with Sec. 290, Milw. Code, as approved under an appropriate erosion control permit, which can be obtained from the Milwaukee Development Center, 809 N Broadway, Milwaukee, Wisconsin.



For any additional information, phone Inspector Michael Demski at [414]-286-3559 between the hours of 7:00 -9:00am and 1:30-3:00pm Monday through Friday.

Per Art Dahlberg, Commissioner of Neighborhood Services, By-

Michael Demski  
Inspector

**NOTICE OF APPEAL RIGHTS:** This order is appealable to the Standard and Appeals Commission, located on the 1st Floor, Milwaukee Municipal Building, 841 N. Broadway, Milwaukee. Appeals must be filed in person and within twenty (20) days of service of this order, if personally served, and within (30) days if served by publication, pursuant to Sec. 218-4-4, Milw. Code. Timely filing of a notice of appeal shall stay this order until the hearing date. Appeals shall be filed with a fee as prescribed in Sec. 200-33, Milw. Code. If possible, bring a copy of this order with you when filing for appeal.

Date Posted: April 19, 2012

**TRADUCCION EN ESPAÑOL**

Si Ud. necesita ayuda para la traducción de esta información, comuníquese con el 'Centro Hispano' Council for the Spanish Speaking, Inc., 614 W. National Avenue, Milwaukee, WI 53204. Teléfono: (414)384-3700, o Community Advocates, 4906 W. Fond du Lac ave., Milwaukee, WI, 53216, Teléfono: (414)449-4777.

**LUS HMOOB**

Yog koj xav tau kev pab txhais cov lus no, thov hu mus rau koomhaum Hmong/American Friendship Association, 3824 West Vliet Street, Milwaukee, WI 53208, xovtooj yog (414) 344-6575.

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