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FAX COVER SHEET

To: City Attorney Grant F. Langley
Telephone No: (414) 286-8550
From: Attorney Matthew D. Lerner
Date: 1/10/2008 10:05 AM
Re: City of Milwaukee Legislative File Number 070576
Pages: 3, including cover page

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January 10, 2008

Via Facsimile (414-286-8550)

City Attorney Grant F. Langley
Milwaukee Office of the City Attorney
200 E Wells St # 800
Milwaukee, WI 53202-3515

Re: City of Milwaukee Legislative File Number 070576

Dear City Attorney Langley,

Our office represents the Apartment Association of Southeastern Wisconsin. Our client has concerns regarding the proposed legislation that was approved at the January 8th Zoning, Neighborhoods, and Development Committee Meeting.

The concern rests with the changes to proposed City Ordinance 252-74(3). Specifically the use of the phrase "disrepair or improperly maintained" in the following sentence: "Should any parking spaces constructed prior to July 17, 1973, pursuant to sub. 2-c, become in *disrepair or improperly maintained*, they may then be required to adhere to current concrete, asphalt or permeable paving requirements pursuant to sub. 1." [Emphasis added]

The phrase referenced *supra*, if used in the final version of the ordinance, is vague and will lead to significant problems throughout the City. As an example, a gutter that has become rusty and full of holes provides a fairly objective standard to inspectors. Any inspector viewing a gutter, such as the one previously described, would find that the gutter is in "disrepair or improperly maintained." However, as used in the current circumstance, "disrepair or improperly maintained" may lead one inspector to think that a parking lot should be repaired while another inspector might determine that the lot in question should be entirely paved over. The lack of standards as to what constitutes "disrepair or improperly maintained" will lead to different areas of the City receiving a different level of enforcement from the various inspectors in these areas.

Disrepair or improperly maintained is a vague phrase that provides no guidance to the Department of Neighborhood Services as to what type of problem the phrase describes. *City of Madison v. Baumann*, 162 Wis. 2d 660, 470 N.W.2d 296 (1991) dealt with an issue of ordinance vagueness in the City of Madison. While *Baumann* primarily concerned issues of free speech, it also discussed the void for vagueness doctrine.

Baumann cites to *State v. Princess Cinema of Milwaukee*, in which the Court wrote, "The void for vagueness doctrine... incorporates the notions of fair notice or warning... [i]t requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent 'arbitrary and discriminatory enforcement.'" *Baumann* at 674 quoting *Princess Cinema of Milwaukee*, 96 Wis. 2d 646, 657 (1980).

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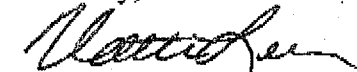
Baumann also cites to additional discussion of vagueness in *State v. Zwicker*, 41 Wis. 2d 497, 507, 164 N.W.2d 512 (1969) citing *Landry v. Daly* (D.C. Ill 1968), 280 F. Supp. 938, that in examining an ordinance or legislative act for vagueness: "The primary issues are whether the provisions... are sufficiently definite to give *reasonable* notice of the prohibited conduct to those who wish to avoid its penalties and to apprise judge and jury of standards for the determination of guilt" *Baumann* at 677.

The use of the phrase *disrepair or improperly maintained* in the proposed legislation referenced *supra* would put in place an extraordinarily subjective standard that would likely be different depending on the particular Department of Neighborhood Services inspector that will be examining the property. The proposed legislation provides no guidance as to problems associated with disrepair or improper maintenance and how to diagnose them. The standard of *disrepair or improperly maintained* is not "sufficiently definite to give *reasonable* notice of the prohibited conduct to those who wish to avoid its penalties" *Baumann* at 677. Due to the subjectivity of this standard, property owners will truly not know whether their parking areas fall into this category or not.

Our client is not opposed to regulation of parking areas and their upkeep, however proposed City Ordinance 252-74(3) as approved by the Zoning, Neighborhoods, and Development Committee will lead to nothing but problems for property owners, the Department of Neighborhood Services, as well as the Municipal Court and City Attorney who will have to enforce this regulation in Court. All parties need to be on notice of what does or does not constitute *disrepair or improper maintenance* of parking areas.

Thank you for your attention to this matter.

Sincerely,



Matthew D. Lerner
Attorney at Law

Cc: Deputy City Attorney Linda Burke (via facsimile)
Apartment Association of Southeastern Wisconsin