

A Citizen's Rebuttal

This is an official document drafted in response to Grant F. Langley's May 30th 2012 letter to James R. Owczarski's inquiries regarding the Interim Historic Designation of the Sydney Hih Complex

Specific Areas of Discussion:

Grant F. Langley's wrong interpretation of the HPC ordinances
Grant F. Langley's misinterpretation of the May 23, 2012 Interim Designation Petition
The truth about Rocky Marcoux and his disregard for the citizens of Milwaukee
The true reasons why Milwaukee's most unique historic building is being demolished

This document was written by:

Noah A. Skowronski

On behalf of every Milwaukee citizen concerned
with protecting and preserving the proud past
and historic buildings of our great city

June 2, 2012

Dear Grant F. Langley,

My name is Noah A. Skowronski.

Erin Dorbin, Erik Ljung, and myself, collaborated to submit the Interim Historic Designation of the Sydney Hih Complex on May 23, 2012. We did this on behalf of the citizens of Milwaukee who want to protect and preserve the history of our cherished historical landmarks.

Although Erin Dorbin filed the actual Petition, I am the one who drafted the attached documents explaining the historical significance of the Sydney Hih Complex. Everything you have read that was attached to Erin Dorbin's Petition Application was written by me. Erin Dorbin and Erik Ljung both contributed to the actual research behind what was submitted, but I was the one who stayed up for two days straight typing up the "Areas of Significance" documents attached to the Petition.

I have recently read your response to James R. Owczarski's questions regarding the application for interim historic designation of the buildings located at 300-318 W. Juneau Avenue (the "Sydney Hih Complex").

The following represents my rebuttal to what you wrote:

I believe your response to James R. Owczarski grossly misrepresents what was presented in the actual Interim Designation Petition and the arguments you used to support your claims neither reflect the actual HPC ordinances or constitute a fair and just understanding of what is actually taking place concerning the demolition of the Sydney Hih Complex.

I have thoroughly read through what you wrote concerning the Interim Designation Petition and the HPC ordinances governing the Historic Designation process. I will be referring to the actual language you used in your response to support my rebuttal and it is my hope that you can gain a clearer perception of how damaging your arguments are to our attempts to stop the demolition of Milwaukee's most unique historic landmark.

I will be quoting your actual written statements in the order in which they were presented in your May 30th response to James R. Owczarski. This will be followed by my specific rebuttals to what you wrote including questions and concerns related to the legitimacy of your claims.

Page 3, Response to Question #2 (final action):

Your Statement:

"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."

My Rebuttal:

You are stating that no final action was taken because no final action was taken. I hope you realize how redundant this explanation is and how little you are actually explaining. I have read the HPC ordinances concerning Historical Designation and fully understand MCO 320-21-9-g. You fail to explain the exact reason behind why there was no "final action" taken concerning the Designation of

the Senn Building.

What caused the Designation Resolution to be “held to the call of the chair” with no “final action” ever taken up until the point of it's supposed termination?

What role did Ruvin Development, the owners of Sydney Hih at the time, play in the matter being “held to the call of the chair” for so long?

Did Robert Ruvin's legal and financial woes play a role in the Designation Resolution being “held to the call of the chair?” and if so, Why was his negligence allowed to control the fate of a building that was nominated for Historical Protection by the HPC?

Page 3, Response to Question #2 (termination, dismissed, denied):

Your Statement:

“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.”

My Rebuttal:

As an Attorney, would you ever go into a court of law and base any legal argument on an assumption?

What basis do have to make such an assumption?

Your statement, “one can assume”, holds absolutely no weight at all. The words “termination”, “dismissed”, and “denied” all have distinct and separate definitions.

The actual definitions of these terms:

termination - to bring to an end or halt; to occur at or form the end of; conclude or finish

dismiss - to stop considering; to refuse to accept or recognize; reject

deny - to declare untrue; to refuse to believe; to refuse to recognize or acknowledge; to decline to grant or allow

Regarding MCO 320-21-9-h-1:

If a Historic Nomination is “terminated” it means that no “final action” was taken within the 2 year time frame outlined in the HPC ordinance. This means that *no action* was taken by any representative at any level of the Common Council “for” or “against” the Designation.

When a nomination is “dismissed” or “denied” this means that a *specific action* was taken by a member of the Common Council to prevent a Designation Nomination from going forward.

It can be proved without a shadow of a doubt that no member of the ZND took a *specific action* to “deny” or “dismiss” the Historic Designation Nomination of the Nicholas Senn building. The

resolution was last “held to the call of the chair” on April 27, 2010. No other meeting or discussion ever took place at any level of the Common Council from this date up until September 21, 2011, when, by the process set forth in MOC 320-21-9-h-1, the Designation Resolution was supposedly terminated.

You have not given an accurate or verifiable response as to *why* the Historic Designation of the Nicholas Senn building was allowed to expire. No one at the ZND level has ever specifically “denied” or “dismissed” this Resolution. The HPC has repeatedly demonstrated a want to give the Nicholas Senn portion of the Sydney Hih complex Historic Protection, yet this request has been held at bay by the ZND.

Why was the Historic Designation of the Nicholas Senn building *allowed* to expire?

Page 4, Response to Question #2 (substantial new evidence):

Your Statement:

“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.”

My Rebuttal:

The May 23, 2012 Petition is clearly focused on nominating the entire Sydney Hih complex for Historic Designation. This is important because it represents a completely new nomination when compared to Gail Fitch's 2009 nomination. Fitch's nomination was specifically focused on the Nicholas Senn building and its history associated with Dr. Nicholas Senn. The Petition submitted on May 23, 2012 goes well beyond the Nicholas Senn era and focuses primarily on the Sydney Hih era. Notice that at every instance in the 2012 Petition when the complex is described, I refer to it as the Sydney Hih/Nicholas Senn building. I drafted the Petition's accompanying documents under the guidance of members of the HPC, and it was stressed that submitting the actual Petition was more important than the actual content of the Petition. We were told that we would be able to add more supporting evidence as the public hearing process was under way.

The original Historic Designation Study report contained one paragraph related to the significance of the Sydney Hih era. It's as follows:

The Senn Building now entered into a period of rebirth, although it was somewhat short lived. Its exterior, as well as the exterior of the other three buildings, was painted into a multi-colored checkerboard palette to highlight the unique mix of tenants that Eisenberg collected into the complex. Many Baby Boomers have recollections of the place, as it became the hub of counterculture activity along with Brady Street. Here the tenants were concentrated vertically on different floors rather than along a street. This may have been the first time that an attempt was made to collect artists and creative types into one setting for commercial purposes. Tenants in 1973 included The Industrial Arts Co., a group of commercial artists in Number 312. In the Senn Building were the Delhi Emporium Gift Shop, Dreams and Dragons art gallery, Fermentation Plantation (home winemaking consultants), Main Stream Records, The Mouse Trap gift shop, The Playhouse gifts, Puerto Rican Valley, and Western Tradition Leather retail shop. The Mine Shaft, a restaurant and bar, was located in the basement. Merkt's Cheese occupied Number 310, the Shish Kabob Restaurant occupied Number 312, a rooming house was located at Number 314, and the Fertile Dirt Cooperative Health Food restaurant was located in Number 316. Betty's Bead Bank was the longest tenant, occupying a first floor space from 1976 through 1999. Permit records reflect dozens of occupancy permits for the building from 1971 through 2001 and included candle shops, jewelry stores, plant stores, and ice cream vendors, among others.

The May 23, 2012 Petition made up a total of 8 pages worth of “new substantial evidence” regarding the historic significance of the Sydney Hih Complex, (if you include all the additional photos that accompanied the Petition, the number of pages of “new evidence” increases). By claiming that the 2012 Petition did not provide “new substantial evidence” you are completely ignoring what was submitted on May 23, 2012.

Definition of “new substantial evidence”:

new - not previously experienced or encountered; different from the former or the old; recently obtained or acquired

substantial - of, relating to, or having substance; true or real; not imaginary

evidence - a thing or things helpful in forming a conclusion or judgment

As an Attorney, how can you justify the statement; “it does not appear”, when describing your opinion on the new evidence presented in the May 23, 2012 Interim Designation Petition?

Does the wording, “it does not appear”, constitute appropriate legal language concerning your opinion?

What does, “it does not appear”, actually mean?

Your Statement:

“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 1980's. 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.”

My Rebuttal:

The May 23, 2012 Petition does not “rely heavily” on the 2009 HPC Study Report. We used the Report as a resource to support the overall historic importance of the Sydney Hih Complex. The 2009 Study Report was specifically referenced to accurately describe how the Sydney Hih Complex meets numerous “Areas of Significance” required by the actual Interim Historic Designation Petition instructions. It would be unjust for us to ignore the significance of Dr. Nicholas Senn and his contributions to Milwaukee because it relates directly to the overall historical importance of the Sydney Hih Complex.

You also did not accurately describe what was actually stated regarding the Senn Building's designation status. You failed to include the whole description of the purpose of the 2012 Petition.

Full accurate statement contained in the 2012 Petition is as follows:

“This Petition Designation is meant to re-open the discussion concerning the Senn Building's Designation status that was originally submitted by Gail Fitch in 2009. Although the buildings to the west are not legally described, the historical importance of the Sydney Hih structure as a whole is vital in order for a fair and just discussion to occur.”

It is obvious that we wanted to “re-open” the discussion concerning the Senn Building's status because the very fact what it was never re-opened at the ZND level is what led to it's supposed termination in the first place. In order to meet the criteria set forth in MCO 320-21-9-h-2, we chose to nominate the entire Sydney Hih Complex to represent a new nomination and also to highlight the numerous aspects of the Sydney Hih era that were never mentioned in the 2009 Study Report.

Nowhere does it specifically state in the actual language of MCO 320-21-9-h-2, that the person filing an Interim Petition is *required* to provide reasons why this “new substantial evidence” could not have been “reasonably presented.” In the actual Interim Historic Petition instructions this requirement does not exist either. Everything included in the 2012 Petition, beyond the Nicholas Senn information, came as a result of over two months of research, conducted primarily by Erik Ljung and myself. This includes interviews conducted in person, examination of documents and articles not included in the 2009 Study Report, and a purposeful focus on the Sydney Hih era in particular. Gail Fitch focused primarily on Dr. Nicholas Senn, and the original nomination was for the Senn Building only.

The information we provided could not have been “reasonably presented” in 2009, mainly because the research that was conducted to support that information occurred nearly 3 years after the first public hearings held by the HPC took place.

How can you justify your interpretation of the HPC Ordinances by including language that does not exist in MCO 320-21-9-h-2?

Your Statement:

“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.”

My Rebuttal:

Absolutely nowhere in MCO 320-21-9-h-2, does the statement, “along with an explanation as to why that evidence could not reasonably have been presented,” exist. You are completely fabricating this requirement and the idea that you have the liberty to do this is completely inappropriate. We were specifically guided by numerous members of the HPC to turn in the Petition based on the requirements outlined in the Interim Historic Designation Petition instructions. Nowhere in the Petition instructions does the word “explanation” even exist, nor does it exist in the HPC Ordinances regarding Historic Designation.

We were told by members of the HPC that supporting arguments and information could be provided as the public hearing process was underway. The act of turning in the Petition was the critical step, not the information we provided. You need to realize that we are not trying to convince the HPC to grant Sydney Hih historical protection. They do not need convincing, considering that they have already nominated the Nicholas Senn Building for Designation in 2009. The May 2012 Petition was specifically submitted to re-open the discussion on the Sydney Hih Complex in general, and to utilize the arguments set forth by Ald. Bauman at the May 15, 2012 ZND meeting.

You have stated that whether or not the new substantial evidence requirement is met “is a decision subject to the vote of the HPC.” But you also claim that “Dorbin's 2012 application does not meet these requirements.” These two statements directly contradict each other and blatantly represent how

little power you actually have in deciding whether or not a new nomination of the Sydney Hih Complex can take place without having to adhere to the “two year” HPC requirements.

If Gail Fitch and the HPC had reasonable access to all the “new substantial evidence” that we presented in the 2012 Petition, why was it not presented in 2009?

Considering the sole focus of the 2009 nomination was Dr. Nicholas Senn, how can you justify claiming that the HPC had reasonable access to all the information we provided concerning the Sydney Hih era? Why would the HPC seek out information completely unrelated to the intent of the 2009 nomination?

The HPC is not allowed to nominate buildings for Historic Designation, this can only be done by individuals who are not on the Commission. Given this reality, all information not provided by Gail Fitch in 2009 could have never been reasonably presented to the HPC. If the HPC instructed Gail Fitch to present specific information they would have violated their only rules that prevent lobbying for specific designations.

Are you implying that because information exists but is not presented at initial hearings regarding designation, it can never be used for re-nominations? and if so, Are you saying that absolutely no re-nominations of previously nominated buildings can ever take place, given that a re-nomination requires new substantial evidence?

Is your interpretation of the HPC ordinances violating other aspects of the HPC ordinances?

**Concluding Statements and other realities
related to your response to James R. Owczarski:**

Ruin Development's
legal and financial troubles:

The crux of the Sydney Hih re-nomination issue revolves solely around the following question:

Why was the HPC's Historic Designation Nomination of the Nicholas Senn Building allowed to expire, causing it's termination?

The HPC supports the Designation of the Sydney Hih/Nicholas Senn building complex and this is evidenced in their 2009 vote to nominate the Senn Building for Historic Protection. The issue we need to focus on is whether or not the ZND acted appropriately when holding this matter “to the call of the Chair”, and then never re-opening the discussion to take a “final action” on the matter before it became terminated.

There were two meetings held at the ZND level in 2010 to discuss the Designation of the Nicholas Senn Building; March 19 and April 27. The total amount of time given to decide the fate of this 130 year old historic building was only 23 minutes over the course of the two 2010 meetings. The main reasons for holding the matter “to the call of the chair” were so that the owners of the building could provide more input about how the Designation would effect future development, and also, according to Ald. Zielinski, to “keep the city's options open” for future consideration.

Robert Ruvin and David Florsheim, the then owners of Sydney Hih, did not even show up to the March 19th hearing. At the April 27th hearing, only Robert Ruvin showed up. You wrote in your response that at the April 27th hearing the owner of Sydney Hih “stated he did not want the building designated as historic.” What you wrote is factually misleading and in many ways completely inaccurate.

At the April 27th meeting Robert Ruvin gave numerous conflicting statements regarding his position on the designation of the Senn Building. When asked if the designation will help or hurt development, Robert Ruvin stated “we go back and forth with that same question.” When asked by Ald. Murphy if he is “here supporting the designation request,” Robert Ruvin responded by saying, “no we're really on the fence.” Mere minutes later, Robert Ruvin stated; “our personal preference would be to not have the building designated.” These are three separate responses to virtually the same question. For you to hand pick one of them while ignoring the others is neither just nor factually accurate.

It is important to consider the preference of the owners when deciding whether or not a building should be historically designated, but given the realities surrounding Ruvin Development at the time, it does not seem appropriate for the then owner of Sydney Hih to be the deciding factor.

At the time of the March and April 2010 ZND meetings, Ruvin Development's main financial backer and contractor, Gatehouse Capital Corp., had backed out of the proposed development at the Sydney Hih site. This resulted because the City Development Commissioner, Rocky Marcoux, denied them a request of \$18 million in city funds to get the project going. Also at that time, Robert Ruvin was involved in a lawsuit filed against him in 2008 over money that he was loaned, but had never repaid.

In September of 2011, Robert Ruvin was ordered to pay \$1.3 million after losing the lawsuit filed against him, coincidentally this was the very same month that you claim the Designation Nomination became terminated. Given these circumstances surrounding the legitimacy of Ruvin Development, the ZND's lack of action regarding the Senn Building becomes very conspicuous and brings up a lot of questions that demand answering.

Rocky Marcoux and the taxpayer
funded secret purchase of Sydney Hih:

In November of 2011, Rocky Marcoux organized the secret purchase of Sydney Hih from owners David Florsheim and Robert Ruvin. Marcoux had the Milwaukee law firm, Friebert, Finerty & St. John, create a private entity called SH Acquisition. He then convinced the Milwaukee Economic Development Corp. to fund the \$769,000 needed to purchase the building. MEDC was then able to purchase Sydney Hih through SH Acquisition. This effectively enabled the whole transaction to occur with zero Common Council involvement and no public scrutiny. Rocky Marcoux has openly stated that the purchase was done in secret through SH acquisition “to avoid publicity that would be created if the city had sought funds provided through a Common Council vote.”

This purchase occurred just two months after the Designation Nomination of the Senn Building was supposedly terminated and was not revealed to the public until late February, early March of 2012. It has been reported that the actual demolition of Sydney Hih will begin on Thursday June 7th 2012; (coincidentally the exact date of the special HPC meeting to discuss the May 23rd Designation Petition.)

The public has only been aware of the impending demolition of Sydney Hih for a little over three months. The raze order for the building was drafted in near secrecy and the HPC was only made aware of it by chance. I was in the HPC office on April 20th inquiring about re-nominating the building when

Paul Jakovich learned over the phone that the raze order was underway. He was making a phone call to find out information on my behalf and would not have found out about the raze order that day if I had not shown up.

It's important to note how little public involvement has actually taken place since Rocky Marcoux organized the secret purchase of Sydney Hih. It is also important to note that this secrecy has led directly to a raze order being drafted before any citizen had time to submit an Interim Historic Designation Petition. Every step of the way the public has been denied access to information related to saving this historic structure. The HPC is governed by a "no lobbying" policy and virtually all information that Erik Ljung and myself have gained has come from two months of extensive questioning and independent research in order to draw the right conclusions and gain a healthy understanding of what has been going on. The HPC has been put in a stranglehold by the ZND's lack of "final action" on the Designation Nomination and this has caused a virtual black out of accessible and usable information concerning what power the citizens of Milwaukee have to save Sydney Hih. This is unacceptable.

The videos that detail the lack of public involvement, as well as the actual amount of time given to the Senn Building's nomination at the ZND level, have mysteriously disappeared from online. These video links of the March 19th and April 27th meetings that had once existed have now been taken offline as of the first week of May 2012. This occurred coincidentally right around the time Erik Ljung and myself stepped up our efforts to save Sydney Hih by questioning numerous individuals at City Hall. Can you explain this?

The way in which you responded to James R. Owczarski represents, in my opinion, a complete white washing of what is actually happening concerning the demolition of Sydney Hih. Your conclusion that we can only discuss the Designation of the three westernmost buildings feels like a slap in the face. It makes all the hours of research and sleepless nights that all of us involved in the Interim Petition have been dealing with for the past two months, completely meaningless. You seem to be interpreting the HPC's own ordinances in such a way that effectively uses them against the HPC, yet they are the only official body in the city that has officially voted and approved the Designation of the Senn Building.

The ZND's inaction is why we are where we are concerning the demolition of Sydney Hih. The secret purchase of Sydney Hih by Rocky Marcoux, using taxpayer money, has allowed a raze order to be issued before anyone in the public had an opportunity to re-nominate the building. You took a week to respond to James R. Owczarski's questions. This effectively cut the 15 day time limit to hold a new hearing in half. In doing so, you have greatly limited our ability to alert the public about the upcoming hearing, and your claim that we can only discuss the three westernmost buildings essentially eliminates our ability to utilize all the "new substantial evidence" that we provided in the Interim Petition.

Final Thoughts:

I don't know who you are personally, so I am not in a position to judge your character or make claims about your actual intentions regarding the Sydney Hih Complex. Everything I have just written is based on your actual words but in the interest of being honest with you, I would like you to know that I am completely offended. The destruction of this historic landmark is a complete affront to everything that Milwaukee and its citizens stand for. It could be argued, and for all I know proved without a shadow of a doubt, that even Mayor Tom Barrett is involved in the unjust demolition of Sydney Hih. After all, he is on the board of directors for the Milwaukee Economic Development Corp.

The citizens of Milwaukee deserve honest answers. I hope you take my written rebuttal seriously and it is my goal that it motivates you to look deeper into what is going on concerning the demolition of Milwaukee's most unique historic landmark.

Sincerely,

Concerned Milwaukee Citizen;

Noah A. Skowronski

June 2, 2012