

DAVID L. BOURNE
Attorney
411 East Wisconsin Avenue
Milwaukee WI 53202
david.bourne@quarles.com

I am writing to state my opposition to the proposed zoning map amendment for 1550 N. Prospect Avenue (file number 170406).

By now, the Common Council has received scores of messages in opposition to this development -- from businesses situated on North Prospect Avenue, from residents of adjacent buildings, and from individuals who live along the entirety of the North Prospect Avenue corridor.

However, I am not aware of any communication that has addressed a topic that should be of keen concern to the Common Council -- and that is the issue of the City's ***potential legal liability*** if the proposed development damages or otherwise harms neighboring buildings.

Accordingly, I have attached a copy of the complete August 26, 2017 legal opinion of the City of Milwaukee's Office of the City Attorney for your review --- and I would draw your attention to the opinion's following conclusions:

"As a municipal corporation, the City would, by definition, be exposed to suit with respect to any approval of building design or construction; such extends to any of its activities as a unit of government."

"The essential point is that the existence and scope of any such liability . . . would be the same irrespective of whether a particular building or project was designed or constructed pursuant to the City's underlying [Zoning] Code or to a [Planned Development District process] approved by the Common Council."

"If City officials receive specific notice of potential risks to adjoining properties associated with the design or construction of any building or building process, the appropriate response and remedy would be through . . . plan examination and [the] permitting process."

Please consider this e-mail to be a "specific notice of potential risks to adjoining properties." In support of this notice, and the claim that the proposed 1550 N. Prospect development poses reasonably foreseeable risks to adjoining properties, I have attached:

(i) the April 15, 2016 memorandum report of GZA GeoEnvironmental, Inc. ("Construction on the adjacent [1550 N. Prospect] parcel has the potential to cause damage to the 1522 building because the new construction could disturb the underlying soil and/or undermine foundations resulting in loss of support"); and

(ii) the August 9, 2017 letter report of geologist Gary David Rosenberg, Ph.D., which contains over two pages of geologic analysis supporting the argument that the proposed 1550 N. Prospect development is likely, among other things, to exacerbate slope instability and erosion at both the Goll site and at neighboring properties.

In addition, we've been advised by a fire safety consultant of the following significant safety issues pertaining to the Houden proposal: (i) the Kahler Slater drawings do not include any information about fire department access; (ii) in the event of a fire event, first responders would not be able to stage without being "in the collapse zone" of the Goll tower; (iii) although the building will be sprinkler protected, the designs leave out ("for obvious reasons") how first responders would be able to evacuate residents; and (iv) no emergency preparedness plan has been presented -- although any such plan would likely require moving people out onto Prospect Avenue or across the street so that emergency vehicles could arrive.

In view of the foregoing, the Common Council should consider itself as being on notice of both the numerous threats posed by the proposed Goll Mansion development, as well the City's potential exposure to legal liability if it approves a zoning map amendment that allows that development to proceed.

Sensible alternatives to the proposed development exist. I would, therefore, strongly encourage the Common Council to reject the Houden plan as one that exposes the City of Milwaukee to an unacceptable degree of legal liability.

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
ADAM B. STEPHENS
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Office of the City Attorney

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August 16, 2017

Ald. Robert Bauman
4th Aldermanic District
Room 205 – City Hall

Re: Liability for Approval of Building Construction through
the Planned Development District Process

Dear Ald. Bauman:

This letter will respond to your request for an opinion of this office pertaining to potential legal exposure that the City could incur by approving development and construction of one or more buildings through the Planned Development District ("PD") process under § 295-907 of the Milwaukee Code of Ordinances ("MCO"), as compared to development and construction of buildings under the City's underlying Zoning Code ("Code"), ch. 295, MCO. Your concern is apparently directed toward instances where the City might be subject to litigation for having approved the development and construction of buildings that subsequently proved to be defective, negligently designed and/or constructed, or that caused adverse physical impacts to neighboring property owners or the public. While your opinion request specifically refers to a proposed development at 1550 North Prospect Avenue, this opinion has City-wide application.

Our response may be summarized as follows: there would be no essential difference with respect to the degree of liability exposure to which the City might be subject based upon whether the City approves a building design or construction through the PD process (§ 295-907, MCO), or through application of the City's underlying Code (ch. 295, MCO). Although these processes are quite different in their design and application, each process encompasses detailed standards (one Code-based and the other contractual). The Code is, of course, the product of Common Council enactments. The PD process also requires specific Common Council approval, following analysis and recommendation by the City Plan Commission ("CPC"). The City's exposure to liability in the event of the type of litigation described above would depend on the particular facts of each case and

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August 16, 2017

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not upon the specific administrative or legislative process by which the development and construction of the building(s) in question was approved.

Our analysis and reasoning supporting this conclusion follows.

Your inquiry requires an examination of the enabling authority for the Code (in general) and the PD process set forth in § 295-907, MCO (in particular). While these processes are very different, their origin and ultimate objectives are identical—to promote a sound regulation of land uses throughout the City. The Code seeks to accomplish this objective in a general sense, while the PD process seeks to do so with respect to specific properties, and in furtherance of the three objectives set forth in § 295-907-1, MCO, *to-wit*: (a) allow flexibility in land development; (b) promote creativity, variety and environmental sensitivity; and (c) encourage development compatible with its surroundings and consistent with the City's comprehensive plan.

Both the underlying Code and the PD process are grounded in specific statutory provisions. *See* Wis. Stat. § 62.23(6) (enabling authority for the City's official zoning map); § 62.23(7)(a)-(d) (enabling authority for both the underlying Code and the PD process). The specific enabling authority for planned development districts (§ 295-907, MCO) is contained within Wis. Stat. § 62.23(7)(b), as follows:

... The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure [sic] adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.

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As noted by your inquiry, the essential difference between conventional zoning and a planned development district is that the former is regulatory while the latter is contractual, requiring the participation and approval of the property owner. *Town of Rhine v. Bizzell*, 2008 WI 76 ¶ 60, 311 Wis. 2d 1, 43, 751 N.W.2d 780, 801. To the extent that PD zoning might be viewed as a species of "spot zoning" (a doubtful proposition given that the Legislature has specifically endorsed it), it is also a fully lawful and recognized mechanism within the State of Wisconsin, so long as it is consistent with long-range planning goals and with the public health, safety and welfare. *Step Now Citizens Group v. Town of Utica Planning and Zoning Committee*, 2003 WI App 109 ¶¶ 28-31, 264 Wis. 2d 662, 679-681, 663 N.W.2d 833, 841-842; *Howard v. Village of Elm Grove*, 80 Wis. 2d 33, 41-42, 257 N.W.2d 850, 854 (1977). Thus, it would not be correct to view the PD process as occupying a lesser standard in the law or as less protective of the public interest as contrasted with conventional zoning.

This conclusion is borne out by the procedural design of § 295-907, MCO, which envisions a careful multi-step process for preparation, review and approval of applications for PD projects. This includes: (1) submission of a "General Plan Project Description and Owner's Statement of Intent" for multi-stage PD projects (§§ 295-907-b-1 through b-11, MCO); (2) preparation and submission of a "Detailed Plan Project Description and Owner's Statement of Intent" for both single-stage and multi-stage PD projects (§§ 295-907-c-1 through c-13, MCO); (3) review and recommendation by the CPC (§§ 295-907-e-1 through e-5 and f, MCO); and review/approval by appropriate committees of the Common Council and the full Common Council (§ 295-907-g, MCO). An approved PD project creates a planned development district which is construed as an amendment to the City's zoning map (§§ 295-907-2-d- and 2-h, MCO). Finally, each PD must meet an array of specific standards set forth in § 295-907-3, MCO. While, as you note, the PD process envisions negotiations between the property owner and City officials and departments, the Code requires considerable detail as to their contents and a careful and thorough process for their review and ultimate approval or rejection.

As a municipal corporation, the City would, by definition, be exposed to suit with respect to any approval of building design or construction; such extends to any of its activities as a unit of government. Of course, it would also be entitled to any defenses against such liability as provided by law, including, among other defenses, the defense of qualified immunity "for acts done in the exercise of

legislative, quasi-legislative, judicial or quasi-judicial functions.” Wis. Stat. § 893.80(4). Approvals of PD districts are the product of the exercise of the City’s legislative authority via actions of its own Common Council. The essential point is that the existence and scope of any such liability, and the availability of qualified immunity and other defenses to liability, would be the same irrespective of whether a particular building or project was designed or constructed pursuant to the City’s underlying Code or to a PD district approved by the Common Council per § 295-907, MCO. We see no distinction in the law for these purposes as between these two categories.

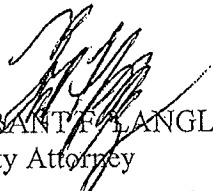
Stated alternatively, whether the City is subject to suit for any alleged act, omission or negligence in construction with approval of any building or project will turn upon the particular facts of each case and not upon the particular process by which the City exercised its authority. The significant factors in any factual inquiry would be whether the City properly exercised due care in the performance of its governmental functions, irrespective of whether they were performed under auspices of the Code generally or pursuant to a PD project plan.

If City officials receive specific notice of potential risks to adjoining properties associated with the design or construction of any building or building project, the appropriate response and remedy would be through the Department of Neighborhood Services’ plan examination and permitting process. We would also note that the liability of municipal building inspectors for negligent performance of duty has been recognized by the courts as a duty owed both to the public generally and to individual members of the public who may be damaged by such conduct. *Wood v. Milin*, 134 Wis. 2d 279, 397 N.W.2d 479 (1986); *Coffey v. City of Milwaukee*, 74 Wis. 2d 526, 247 N.W.2d 132 (1976).

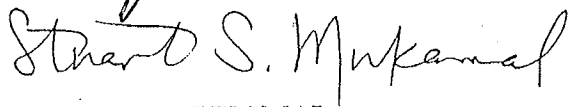
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Please contact this office if you have any further questions concerning this matter.

Very truly yours,



GRANT F. LANGLEY
City Attorney



STUART S. MUKAMAL
Assistant City Attorney

SSM:lmb

c: Rocky Marcoux, DCD Commissioner
Ald. James Bohl, 5th Aldermanic District
Deputy City Attorney Miriam Horwitz
Deputy City Attorney Adam Stephens
Jim Owczarski, City Clerk
1033-2017-1569:241703



Proactive by Design

GEOTECHNICAL

ENVIRONMENTAL

ECOLOGICAL

WATER

CONSTRUCTION
MANAGEMENT



MEMORANDUM

Date: April 15, 2016

To: Patrick Dunphy, Esq.
Cannon & Dunphy, S.C.
595 North Barker Road
Brookfield, Wisconsin 53045

From: Ian J. Mosbrucker, GZA GeoEnvironmental, Inc.
John M. Siwula, P.E., GZA GeoEnvironmental, Inc.

File No.: 20.0154824.00

Re: Geotechnical Engineering Services
Future Development at 1550 North Prospect Avenue
Milwaukee, Wisconsin

In response to the request of Cannon & Dunphy, S.C. ("Client"), GZA GeoEnvironmental, Inc. (GZA) is pleased to provide the following Memorandum summarizing our recommendations related to future construction activities adjacent to the existing high-rise structure located at 1522 North Prospect Avenue in Milwaukee, Wisconsin ("1522" and/or the "Site"). At the time of GZA's proposal (File No. 20.P000112.17, dated March 8, 2016), the 1550 North Prospect Avenue parcel, located directly north of the Site, was in consideration for construction of a new high-rise structure. We now understand that the scope of services concerning the proposal has since been altered due to the abandonment of the proposed development. Therefore, the amended purpose of this Memorandum is to provide GZA's general recommendations addressing the potential impacts that future construction at 1550 North Prospect Avenue may have on the Site. The information presented in this Memorandum is subject to the Limitations provided in Attachment 1.

EXISTING CONDITIONS AND AVAILABLE DOCUMENTATION

The Site, currently utilized as a 19-story residential condominium building, is rectangular-shaped and bounded on the northwest by North Prospect Avenue, on the southeast by a bluff, on the southwest by a driveway and an apartment building, and on northeast by 1550 North Prospect Avenue. The 1550 North Prospect Avenue ("1550") location is occupied by a parking lot and a 2½-story historic building known as the Frederick T. & Eleanor Goll House. The building footprint is approximately 4,100 square feet and is positioned near the northeast edge of the parcel.

Client has provided GZA with a detailed plan set of the existing 1522 structure and a subsurface exploration report from Midwest Engineering Services, Inc. (MES) detailing additional subsurface testing that was performed in the spring of 2001, on the 1522 parcel prior to the building being constructed.



SCOPE OF WORK

Client has retained GZA to review the existing documentation and provide our recommendations regarding the potential impacts of future construction at 1550 North Prospect Avenue on the existing structure at 1522 North Prospect Avenue. GZA has been in contact with Mr. Patrick Dunphy in regards to the requested modifications made to the proposed scope of services.

Construction on the adjacent parcel has the potential to cause damage to the 1522 building because the new construction could disturb the underlying soil and/or undermine foundations resulting in loss of support. Issues that should be considered are outlined in the subsequent sections of this Memorandum. It is recommended that a pre-construction survey be performed at the 1522 structure and grounds prior to any construction commencing at 1550. The pre-construction survey would document existing conditions just before the adjacent construction commences.

EXISTING FOUNDATION UNDERMINING

Per the available building plan set and drawings, we understand that footings on the AA and A gridlines make up the northern portion of the 1522 building and foundation that is nearest to 1550. The bottom of the footings along lines AA and A range in elevation from 53.57 to 61.90 feet Milwaukee City Datum (MCD). Based on our understanding of the soil exploration conducted at the Site, future developments nearby will likely be founded on one of three types of foundations; a shallow spread footing foundation system, a deep foundation system consisting of driven pipe-piles, or a deep foundation system consisting of drilled piers. Depending on the planned basement depth/elevation for the new building to the north, it is likely that they could be installed at elevations at or below that of one or multiple footings along the AA and A lines of 1522. Therefore, soil densification, loosening and/or caving from beneath the AA and A line footings are possible and could negatively affect 1522.

If a shallow spread footing foundation system or deep drilled pier foundation system is utilized at 1550, then soil loosening and caving have the potential to undermine footings along the AA and A lines of 1522. Each of these foundation systems require excavations to create an open area to pour concrete footings or drilled piers. If the opened areas, drilled or excavated, collapse, cave, or erode, footings of 1522 in close proximity to the excavation could be compromised and settle. Construction measures should be taken to mitigate the potential for unintended erosion or collapse/caving within the excavations. This can be achieved using adequately designed earth retention systems/shoring for new spread footings or temporary casing for drilled piers. If these systems are not adequately designed or constructed, then movement of the 1522 foundations and building could occur. If soil caving or collapse extends beyond the intended excavation area and undermines the 1522 footings, this should be documented. This would require repairs to be made which could consist of grouting, underpinning, or some other method to re-establish foundation support.

If a driven pipe-pile foundation system is utilized at 1550, then soil densification of granular layers could result in settlement of footings along the north side of the 1522 structure. As piles are driven into the soil, vibrations and displacement of soil around a pipe pile can compact the soil with resulting movement. In the case of pipe piles of typical 12- to 14-inch diameter, the densification could extend laterally 3 to 4 feet or more from the driven pile. From the boring information provided by the Client, the general soil profile mostly consists of cohesive material with few layers and seams of silty sand. Given this information, soil densification seems to be an unlikely issue. Nevertheless, if pipe-piles are utilized for support of the 1550 structure near the edge of the 1522 property line, then construction measures should be taken to provide adequate distance from the new footings to the existing footings and basement wall on line AA to reduce the potential for support problems.

Another form of undermining could occur if water runoff from the 1550 parcel was not controlled appropriately during and after construction. Water allowed to run from north to south along the existing bluff and onto the 1522 parcel may have the potential to erode the surface of the bluff and cause soil to migrate downhill. Long-term exposure to such erosion could potentially compromise the subgrade integrity of footings.



EXCAVATION SUPPORT AGAINST LATERAL MOVEMENT

Open excavations to allow for the construction of a multi-level or single level basement at 1550 North Prospect Avenue could pose another concern for the foundations of 1522. Large, open excavations require a shoring system to prevent the excavation from caving in. A shoring system installed for an excavation at 1550 must account for the additional loads of the nearby 1522 structure. Failure to account for these additional loads could result in a failure of the shoring system and lateral movement of soil toward the open excavation, potentially resulting in distress to the 1522 structure. Depending on the proximity of the excavation, 1522 could potentially experience variable amounts of lateral movement and/or cracking on basement walls and footings.

To prevent lateral movement of the shoring system, a potential solution would be to use tieback anchors. Tieback anchors are drilled laterally into the soil behind the retention system and effectively hold the shoring in place. Use of tieback anchors along the southwest edge of 1550 would require a temporary easement from the owners of 1522 to allow the tiebacks to penetrate onto the parcel. A temporary easement would not need to be agreed to and that would preclude the use of tiebacks. Additionally, tiebacks, if not installed precisely, could potentially come in contact with or even damage the footings or basement walls of 1522. Acceptable alternatives for tieback anchors would include the installation or cross-bracing and/or rakers (steel struts) at the 1550 site to reinforce the shoring system within the 1550 site and not extend under 1522.

SUMMARY

For ease of reading, GZA has included the following listed summary; however, it is recommended that this Memorandum be read in its entirety.

- Excavations to allow for the installation of a foundation at 1550 North Prospect Avenue could impact the existing structure at 1522 North Prospect Avenue.
- Undermining of soils below 1522 could occur by being washed out, loosened, densified, or eroded and this could potentially compromise the support integrity of the footings along lines AA and A of the 1522 structure.
 - New shallow spread footings excavated below existing footings and deep drilled pier foundation systems have the potential to cause soil loosening and caving.
 - Deep driven pipe-pile foundation systems may cause soil densification and subsequent building settlement. Additionally, the pile driving vibrations can be unpleasant and disturb residents of 1522.
 - Improper management of water runoff at the future 1550 construction site could potentially erode soil along the bluff southeast of the 1522 structure and result in loss of foundation support.
- Excavations at 1550 should be sufficiently shored and supported to account for the additional load of the 1522 structure.
 - Cross-bracing and rakers are viable options to provide the lateral support of an earth retention system on 1550. Tieback anchors are an option for earth retention support, but would have to extend beneath the 1522 structure. GZA does not recommend giving a temporary easement for tiebacks because of the potential for causing distress to 1522.



April 15, 2016

File No. 20.0154824.00

Memorandum – Geotechnical Engineering Services

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CONTINUING SERVICES

GZA should be given an opportunity to review the geotechnical-related plans and specifications for proposed developments on the 1550 North Prospect Avenue parcel. Additionally, if a project were to advance into construction phases, we recommend that GZA be retained during the foundation construction and earthwork phases of the project to monitor conditions and provide recommendations, as needed. GZA can provide vibration monitoring services as well as pre-construction surveys, as needed, prior to future foundation construction.



ATTACHMENT 1

Limitations



GEOTECHNICAL LIMITATIONS

Use of Report

1. GZA GeoEnvironmental, Inc. (GZA) prepared this report on behalf of, and for the exclusive use of Cannon & Dunphy, S.C. ("Client") for the stated purpose(s) and location(s) identified in the proposal for services and/or report. Use of this report, in whole or in part, at other locations, or for other purposes, may lead to inappropriate conclusions; we do not accept any responsibility for the consequences of such use(s). Further, reliance by any party not expressly identified in the agreement, for any use, without our prior written permission, shall be at that party's sole risk, and without any liability to GZA.

Standard of Care

2. GZA's findings and conclusions are based on the work conducted as part of the Scope of Services set forth in the proposal for services and/or report and reflect our professional judgment. These findings and conclusions must be considered not as scientific or engineering certainties, but rather as our professional opinions concerning the limited data gathered during the course of our work. If conditions other than those described in this report are found at the subject location(s) or the design has been altered in any way, GZA shall be so notified and afforded the opportunity to revise the report, as appropriate, to reflect the unanticipated changed conditions.
3. GZA's services were performed using the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services, at the same time, under similar conditions, at the same or a similar property. No warranty, expressed or implied, is made.

Subsurface Conditions

4. In preparing this report, GZA relied on certain information provided by Client, state and local officials, and other parties referenced therein which were made available to GZA at the time of our evaluation. GZA did not attempt to independently verify the accuracy or completeness of all information reviewed or received during the course of this evaluation.
5. Water level readings have been made in test holes (as described in the Terracon report) and monitoring wells at the specified times and under the stated conditions. These data have been reviewed and interpretations have been made in this report. Fluctuations in the level of the groundwater, however, occur due to temporal or spatial variations in areal recharge rates, soil heterogeneities, the presence of subsurface utilities, and/or natural or artificially induced perturbations. The water table encountered in the course of the work may differ from that indicated in the report.
6. GZA's services did not include an assessment of the presence of oil or hazardous materials at the property. Consequently, we did not consider the potential impacts (if any) that contaminants in soil or groundwater may have on construction activities or the use of structures on the property.
7. Recommendations for foundation drainage, waterproofing and moisture control address the conventional geotechnical engineering aspects of seepage control. These recommendations may not preclude an environment that allows the infestation of mold or other biological pollutants.

Compliance with Codes and Regulations

8. GZA used reasonable care in identifying and interpreting applicable codes and regulations. These codes and regulations are subject to various and possibly contradictory interpretations. Compliance with codes and regulations by other parties is beyond our control.

Additional Services

9. GZA recommends that we be retained to provide services during any future site observations, design, implementation activities, construction and/or property development/redevelopment. This will allow us the opportunity to: i) observe conditions and compliance with our design concepts and opinions; ii) allow for changes in the event that conditions are other than anticipated; iii) provide modifications to our design; and iv) assess the consequences of changes in technologies and/or regulations.

August 9, 2017

City of Milwaukee Plan Administration
Dept of City Development Commissioner Rocky Marcoux
Alderman Robert Bauman
Mayor Tom Barrett
Doug Hagerman (1522 Representative)
Carol Wolcott (1522 Association President)

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RE: Goll Mansion/ 1550 Prospect Ave. File #170406
A PROPOSAL THAT FAILS TO ADDRESS GEOLOGICAL ISSUES

To Those Referenced:

I am writing to object to Goll Mansion LLC's request to re zone the property at 1550 N. Prospect Ave, Milwaukee 53202. My concern is informed by the fact that I have taught university-level geology for some 34 years before retiring to Milwaukee; I have had discussions about the subsurface geology along Prospect Avenue with a colleague in the Geoscience Department UWM who is a State Certified Professional Geologist (CPG); and I have reports from a licensed property inspector and from a structural engineer whom I employed when I made an offer on a nearby home that turned out to have foundation problems which both parties ascribed to southeast Wisconsin's underlying geology. Moreover, I have read reports in the Milwaukee Journal Sentinel and have observed costly efforts to remediate the consequences of substrate/ water flow problems at Milwaukee's City Hall and I have observed stability problems along the base of the bluff along the Oak Leaf Trail (retaining walls pinned to the substrate beneath the apartments at 1570 N. Prospect two doors proximal to 1550, ongoing remediation efforts beneath the Jewish Home and High Point, and deteriorating retaining walls nearby all along the Trail).

But first I must note that I live in the "02 stack" on the southwest corner of 1522 N. Prospect where obstruction of a lake view by the proposed building is not an issue, thus belying Mr. Houden's prejudicial claim that remonstrators at 1522 are merely rich people who don't want their view spoiled.

Mr. Houden refers to his proposed building as a 27-story apartment tower + 3 floors of overlying penthouses and a machine floor. Frankly, that's an obfuscation: It's a 30-story tower. Further, the "Notice of Public Hearing of August 2, 2017" states that the building has been reduced in the east-west direction by 10 feet, presumably implying that the building's extension over the bluff is 10 feet less than previously proposed. However, Mr. Houden's design agent, Kahler Slater, presents the north elevation of the building ("Detailed Planned Development Submission") that shows a reduction of 10 feet up to approximately the 7th floor ONLY, and a reduction of less than 5 feet upwards from the 8th floor.

Therefore, the proposal should properly be described as resubmission of the two previously submitted requests that were denied and should be denied again.

The discrepancies between the claimed vs actual dimensions are significant in view of the geology of the substrate on which the tower is to be built. The size and weight of the building still present issues that neither Mr. Houden nor Kahler Slater Design have addressed, despite my calling attention to them in my letters of July 15 and June 12, 2016 to the parties referenced above-- notwithstanding Kahler Slater's intimations to the contrary in their letter to the Plan Commission of July 24, 2017 wherein they admit "significant input from the neighbors..." that they claim "...resulted in positive changes to the project."

-2-

August 9, 2017

I submit that these changes are not substantive. The developer and his design agent have submitted no evidence of due diligence to mitigate risks from a 30-story building, 40% of which is proposed to extend beyond the edge of the bluff composed of soft sediment. The soil underlying the property is 100-150 feet thick and is composed of unconsolidated, soft sediments that are glacial and fluvial (river and stream) clays, silts, sands, gravels etc sitting atop bedrock of shale and argillaceous (clay-rich) dolomite (a limey rock) that are not much harder than overlying sediment. These characteristics cause the soils of southeast Wisconsin to expand and contract far more than other soils and consequently buildings in the area are prone to foundation movement and moisture.

It is common in the Milwaukee area to advance piles either to bedrock or until refusal where the piles no longer advance into the subsurface. The effects of soil movement and subsurface water flow need to be carefully assessed and steps taken to mitigate consequences, not to mention that pounding of pilings for a building situated within 4 feet of our property line presents risk of damage to our building.

Clearly substrate problems are generalized throughout the Milwaukee area and are manifest along the base of the bluff atop which Prospect Avenue buildings sit. Why has Mr. Houden not addressed them?

They are especially pertinent here because an unprecedented 40% of the building will extend beyond the edge of the bluff, from the 79-foot contour interval down to the 48-foot contour interval which is approximately 22 feet above the Oak Leaf Trail, itself a relatively flat surface at the 26-foot contour interval. The escarpment of the bluff appears to be a wave-cut notch and the Oak Leaf Trail is on a wave-cut terrace (i.e. a previous shoreline of Lake Michigan). Thus, the building will extend into the former bed of Lake Michigan which, as I understand it, is prohibited by State of Wisconsin law. If one insists that the Oak Leaf Trail runs along a graded surface, i.e. not a wave-cut terrace, and that the bluff is not a wave-cut escarpment, the bluff nevertheless has been over steepened and is eroding. Either way, to my knowledge this will be the only apartment or condo along Prospect granting private access from the bluff to the taxpayer-maintained Trail, restricted for sole benefit of Mr. Houden's leaseholders (and his company).

No other building along this area of the Oak Leaf Trail extends 60 feet beyond the edge of the bluff and any structure that is close to the edge is simply a recreational platform or a parking structure of 1-3 levels. The Jewish Home and High Point are arguable exceptions (neither more than 12 stories high) but the relief (slope angle and height) there is lower (but still requiring remediation--see above). The risks of slope instability are even greater for a 30-story building extended over the edge of the bluff where its relief is high.

The Milwaukee Zoning Code of Ordinances, Zoning 295, states that its mission is to encourage development that is compatible with its surroundings, and to "...prevent and control erosion, sedimentation, and other pollution...and maintain a compatible scale of development..."

In declining to scrutinize these important issues, have the relevant City of Milwaukee officials abandoned this mission?

Sincerely yours,

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