City of Milwaukee

IMPORTANT NOTICE: A $25 FILING FEE MUST ACCOMPANY THIS APPEAL, WITHIN THE DEADLINE REFERENCED BY THE BILL.

Checks should be made payable to: City of Milwaukee and a copy of the bill should be included with your appeal

IMPORTANT NOTICE FOR CUSTOMERS PAYING BY CHECK

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account, or to process the payment as a check transaction.

IF THE CHARGES HAVE ALREADY APPEARED ON YOUR TAX BILL, THIS APPEAL CANNOT BE FILED

PLEASE READ CAREFULLY:

This Board may only determine if the City Department followed proper administrative procedures. It cannot hear appeals as to whether a Building Order is valid or not (those must be appealed to the Standards and Appeals Commission).

TO: Administrative Review Appeals Board
City Hall, Rm. 205
200 E. Wells St.
Milwaukee, WI 53202
(414) 286-2231

DATE: 8/29/19

RE: 2581 N. Terrace Ave 53211
(Address of property in question)

Under ch. 68, Wis. Stats., s. 320-11 of the Milwaukee Code of Ordinances, this is a written petition for appeal and hearing.

I am appealing the administrative procedure followed by DNS + HPC
(Name of City Department)

Amount of the charges $ $101.60

Charge relative to: Order for removal of 2 Solar Energy Systems

I feel the City's procedure was improper due to the following reasons and I have attached any supporting evidence, including city employee's names/dates which I spoke to regarding this issue and copies of any city orders received:

THE DNS Fines are based on illegal interference with a ~~gas~~ solar energy system specifically protected under Wisconsin Law.

Pls see attached 2 Brief in Support of Appeal, Affidavit of Susan La Budde and included ~~exhibits~~ exhibits and supplemental materials.

Signature

Susan A. La Budde
Name (please print)

2581 N. Terrace, 53211-3821
Mailing address and zip code

414-458-0013
Daytime phone number

ARAB form 10/1/2018

Rec'd 8/8/19

Department of Neighborhood Services
Enforcement Section
841 N. Broadway
Milwaukee, WI 53202

August 06, 2019
Order #: ORD-18-16146

City of Milwaukee

(phone notes) Linda Elmer

SUSAN LA BUDDE
2581 N TERRACE AVE

MILWAUKEE, WI 53211

H/C 8/15 for FORM

Re: 2581 N TERRACE AV

When a property is reinspected and violations remain uncorrected, the Milwaukee Code of Ordinances provides for these reinspection fees:

First reinspection $101.60
Second reinspection $203.20
All subsequent reinspections $203.20

There is no charge for the reinspection that shows compliance with all violations.

All reinspections which show noncompliance with the order will be charged at the above rate. These fees will be assessed against the property as a special charge and will appear on the tax bill for this property. **On 08/05/2019, we imposed a $101.60 reinspection fee, which includes a training and technology surcharge. Any outstanding fees will automatically be assessed to your 2019 tax bill.**

As you can see, the cost of noncompliance with the code can add up quickly. The Department would prefer to see you put the money into correcting the violations and not into paying reinspection fees. Please contact me as soon as the violations have been corrected. If I do not hear from you, we will continue to reinspect until the property has been brought into compliance with the code. Please do not put us in that situation.

If you wish to appeal this charge you must file that appeal within 30 days of the date of this letter. It must be filed with the: Administrative Review and Appeals Board, Office of the City Clerk, Room 205 City Hall, 200 E Wells Street, Milwaukee Wisconsin 53202, 414-286-2221. Please contact them to obtain the proper application form. There is a $25 fee required when filing this appeal.

Vincent Bohlicks ch. att
Brad Hutch.
Ald Kalvin Johnson
ARAB

Please be advised that if you have filed for bankruptcy, this letter is for informational purposes and is not intended as to be construed as an attempt to collect a debt during the pendency of your bankruptcy as other conditions may apply.

To discuss the violations, please contact the inspector listed below. Please contact your attorney with any legal questions as this office cannot give legal advice

Please call Inspector Todd Vandre at 414-286-8763 during the hours of **8:00 a.m. to 10:00 a.m.** Monday through Friday for information on which violations remain uncorrected or if you have any questions. Violations can also be viewed on our website at www.milwaukee.gov/lms.

Request to be at HRG ...

Failure to fully comply with the Historic Preservation decision (180671).

Todd Vandre

Recipients
SUSAN LA BUDDE, 2581 N TERRACE AVE

Steve Vicci
Bill Adderl

Copyright?

MILWAUKEE
2587

Linda → 286-2231

Brief in Support of Administrative Appeal ~ Susan A. La Budde

Introduction

This is an appeal of assessment of fines by the Department of Neighborhood Services and / or the Historic Preservation Commission (the "City") relating to the installation a "solar energy system" in the form of of two small sola tubes at my residence in July 2018, for which the HPC improperly and illegally required me to file, and then denied, a COA application.

Generally, material provided at my 9/2018 COA hearing at the HPC and 10/2018 appeal to the Board of Zoning and Neighborhood Development (ZND) are not duplicated here. Other facts and information are set forth in the accompanying **Affidavit of Susan A. La Budde** and exhibits.

This submission provides new information and new arguments based on additional research of the HPC files, communications with the HPC staff, and on new legal arguments, particularly relating Wisconsin's unequivocal exemption of all solar energy systems from local regulation, including (and particularly) regulation by historic districts.

While the City Clerk has said to me that the HPC's decision is unappealable for any reason whatsoever and that I have no recourse, *Aff. at para 8*, (short of raising this issue when the City seizes my home for unpaid fines), it defies common sense—and surely the law—that the HPC and DNS can levy (and execute on) fines that are based on an incontrovertibly extra-legal government action. As demonstrated below, the HPC had and has no jurisdiction to assert in the first place. It cannot regulate or prohibit solar energy systems. So any decision it issues is void, unenforceable. (As are fines based on same.)

If, after reviewing this brief, the reviewing body disagrees, then I request that this matter be handed over to the City attorney's office. I'd also ask that the City expedite its forfeiture process in this case so this matter can be heard *de novo* as soon as practical.

While I believe such course would be a huge waste of everybody's time and resources, the City has dragged out an illegal action against me for over a year—creating substantial uncertainty, expense, and cloud on my title. To me, this is nonsense; but, unfortunately, nonsense apparently driven largely by one unfettered 'personality' *(Aff. at para. 40)* rather than due regard for the law or impartial process. Sad. :(

The additional grounds for this appeal include:

1. Sola tubes are explicitly exempt from HPC oversight and regulation under Wisconsin law. Sola tubes fall squarely within the State's definition of "solar energy system" as "equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy." Solar energy systems are explicitly protected and exempt from HPC regulation under Wisconsin law, both in keeping with

the State's mandated renewable energy targets and because the State found that historic districts were too rigid in their treatment of them. A sola tube is akin to a mini-solar panel and qualifies for the same Federal Tax credits and state incentives as other solar projects such as solar panels. Wisconsin statues preclude the HPC from attempting to apply its rules and guidelines to the installation or use of sola tubes.; they simply don't apply.

2. Because the City discontinued its program of providing annual notices to residents of the historic district, some 20-30% of COA (Certificates of Authority) are sought retroactively, a failure rate that is unacceptable. The City shares responsibility when homeowner are sandbagged after the fact with fines for improvements they reasonably had no idea are supposedly regulated for stringent aesthetic, historic considerations.

3. Even if, for the sake of argument, the Guidelines (which are silent on sola tubes and admittedly inaccurate as to solar panels (*Aff. at para. 27*)) were applied, the sola tubes do not contravene them when such Guidelines are applied consistent with the City's interpretation and application of these same rules by the HPC to similar roof structures such as skylights, roof vents, and gigantic modern anachronistic appliances such as roof-mounted whole-house air conditioners. The City has tried to lump sola tubes in the category of skylights, but even there, the City's own rules — as represented by consistent written evidence in its files—permit them.

4. Even if, for the sake of argument, the Guidelines were applied, the City violated state and federal constitutional Due Process considerations in failing to apply the balancing-of-interests test mandated by the Guidelines and engaged in substantial, impermissible bias in the handling of my COA when compared to similarly situated projects.

5. Even if, for the sake of argument, the Guidelines were applied, the City violated my rights to state and federal constitutional Equal Protection in applying substantially different, more stringent rules to me than it does and has for every other similarly situated roof project in the last dozen or so years in the District; in its COA granting and enforcement decisions; and even in is various statements of what is an admittedly unwritten 'rule' is as to pre-existing skylights. The City justifies and implements these differences based on widely varying definitions of necessity, on selective use of "Chairman's discretion" for favored projects, and on ignoring the balancing of interests test mandated by the Guidelines when to do so suits its desire to achieve a pre-determined result.

6. Even if, for the sake of argument, the Guidelines were applied, the City routinely re-interprets or essentially re-writes the Guidelines on the fly to adapt to evolving technology. In this case, it could readily grant a COA for my modest sola tubes because they are entirely consistent with and integral to the Mid Century Modern architectural style of my condos, which is absolutely unique in the District.

7. The City's own architectural expert (and longtime HPC member) said my the sola tubes did not contravene the Guidelines and would pass muster with the HPC—unless 'personalities' intervened; which is exactly what happened when the HPC Chair railroaded through a pre-arranged disposition contrary to the HPC's own guidelines and precedents and prior to conducting the actual open meeting.

Argument

Sola Tubes are a Type of "Solar Energy System" that are Promoted as Part of the State's Long Term Renewable Energy Goals and are Specifically Exempt from Regulation by the HPC.

In keeping with its long term goal for 10% renewable energy, Wis. Stat 196.378, Wisconsin has taken the regulation of solar energy systems out of the hands of local historic districts and explicitly protects them from local regulation.

For example, solar panels function best on a south facing roof slope. Because local historic districts were attempting to relegate them to just rear roof slopes regardless of orientation, their efficiency was substantially impaired if the rear faced direction other than South.

For these and other reasons, the State took regulation and oversight out of the hands of local historic districts.

Wis. Stat. sec. 66.0401 provides:

> 66.0401 Regulation relating to solar and wind energy systems.
> ...
> "(1m) Authority to restrict systems limited. ... No political subdivision may place *any* restriction, either directly or in effect, on the *installation or use* of a solar energy system" except for limited exceptions such as protecting "public health or safety." [Emphasis added].

See also Aff. at para. 27 .

Moreover, local authorities are specifically prohibited from imposing any restrictions that would increase the cost or decrease the efficiency of a solar system. Id. at (1m)(a) and (b).

Solar energy and solar energy systems are broadly defined under Wisconsin law:

> f. "Solar energy" means radiant energy received from the sun.

> g. "Solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy. (Emphasis added).

Wis. Stat. Sec. 13.48(2)(h)1.f.

Both active and passive solar energy systems are covered by these rules. Id.

Under this statute, I have the right to instal solar energy systems anywhere on my roof that makes functional sense. And much as it may desire to do so, the District cannot apply any aesthetic or subjective criteria to deny such statutory rights.

The City has repeatedly and improperly tried to lump my sola tubes in the category of "skylights". However, they could not be more different.

Sola tubes differ from skylights in virtually every respect in terms of material, operation, technology, functionality, historicity, and especially for eligibility for Federal tax credits and State incentives.

A skylight is essentially a plain glass window in a rigid metal frame on a roof that directly transmits unmediated sunlight into a room. The skylight does not direct, concentrate, convert, or collect sunlight but merely lets sunlight flow through; as such, it travels through the interior space, often causing unwanted visual glare and bleaching interior furnishes. Skylights do not store or convert solar energy for later use.

In contrast, a sola tube is a passive collector of solar energy that directs, reflects, concentrates, and magnifies light that is then reflected through a diffuser. It does so by means of a small transparent dome on top of a flexible tube lined with special metallic material. The light cast is intense but even, diffuse, and stationary. The interior of a sola tube contains a device that stores solar energy which, with the operation of a photos-sensitive timing detector, later emits light at night time. The day and night benefits are such that, for me, they entirely eliminate the need for electrical lights in that part of my Condo. (Technical information and testimony by my installer was provided at the COA hearing).

Unlike skylights, sola tubes also qualify for the identical 30% Federal tax credits (and state incentives) for other solar energy projects, such as solar panels; I have applied for and received such credits.

Accordingly, sola tubes are statutorily protected "solar energy systems". Because they necessarily serve the largest rooms in my Condo, the only roof slope they can be located on is on the side/ North facing slope of my roof. State law requires they be permitted to remain there as the most functional efficient and least costly placement of them.

When Nearly One Third of all Residents Are Snagged Retroactively in the HPC's Review Process, the System Is Clearly Broken. It Is Unfair for the HPC To Take the Position That Ignorance Is no Excuse and Count Retroactivity as a Factor for Denial. Instead, It Shares Responsibility for Discontinuing its Program of Annual Notice to District Residents.

The City used to mail an Annual Letter to every single family residence in the District. See, Exhibits to Affidavit.

When I met with City Clerk Jim Owczarski on August 27, 2019 and asked about this now discontinued practice of annual mailings (which he said was discontinued for funding reasons about 7-8 years ago). Aff. at para. 27.

As a result of the discontinuation of annual notice, it now stands that a large minority of COAs are submitted retroactively, after the unsuspecting homeowner has made improvements in good faith. Last year, City Clerk Jim Owczarski guesstimated for me the retroactive rate at 20-30%, a figure he confirmed a few days ago, although he added it could be a bit less. Aff. at para. 28.

As a result of the discontinuation of annual Notice Letters, per Mr. Owczarski, the City currently relies exclusively on the building permit department, via the permit application process, to provide notice of the existence of the District. The City so relies even though (as Mr. Owczarski acknowledged), the HPC Guidelines regulate a wide variety improvements that do not require building permits, such as:

- hard landscaping, such as patios, trellises, children play sets, retaining walls, pergolas, and coy ponds, even in backyards;
- mail box design, color and location;
- tuck pointing (mortar color);
- painting of brick exteriors (prohibited);
- gutters (color and material; shape—round, square, or rectangular);
- roof shingle (color, material and dimensionality);
- and even removing, changing or adding bushes, trees and flowers (including plant height when installed and when mature).

The installation of sola tubes does not require a building permit because it slides between and there is no cutting into or alteration of existing roof structures. (See testimony and materials of installer provided at 9/4/18 COA hearing.) Nevertheless, the HPC cited the retroactive nature of my COA application as a reason for denying it. (See materials presented at ZND appeal).

The City's decision to terminate its notice program has resulted in substantial inconvenience to residents and in increased burdens on the City staff tasked with managing compliance issues.

Even if, for the Sake of Argument, The HPC Guidelines Applied, the City is Misconstruing and Misapplying their Plain Language.

The historic preservation guidelines the City applies were adopted in the 1980s, about 10 years after the 4 condos in my Association were constructed in 1971as dedicated condos (not conversions).

The Guidelines applicable to roofs are:

> Retain the original roof shape. Dormers, skylights and solar collector panels[1] may be added to roof surfaces if they do not visually intrude upon those elevations visible from the public right of way. Avoid making changes to the roof shape that would alter the building height, roofline, pitch or gable orientation. (Historic Designation Study Report, North Point North Historic District, page 6, Sec. IX. A.1.a; emphasis added).

These Guidelines explicitly require a balancing-of-interests test; they are a not fiats set in stone but "*guides*", which:

> are not intended to restrict an owner's use of his/her property, but to serve as a guide for making changes that will be sensitive to the architectural *integrity of the structure* **and** the appropriate *overall character of the district*. [Emphasis added]. (Historic Designation Study Report, North Point North Historic District, page 8, Sec. IX. A.)

The City has not offered any further interpretation of the phrase "do not visually intrude" on "elevations visible from the public right of way", but appears to take the position that any roof top protrusion is a violation if it is on a side slope or any roof slope that is visible to the street. This is an incorrect reading of the plain language of the Guidelines. And of the City's application of them.

Take careful note of the language: it does not automatically prohibit a skylight or such if it happens to be on a roof, such as a side slope, that is 'visible from a road'. Instead, if such an improvement is on a roof slope visible from a road, such *improvement* shall not "visually intrude".

Note, too, that the language does not state an absolute prohibition: the use of the word "intrude" implies a certain minimum or degree, and not an absolute prohibition, but of an encroachment of some significance.

By virtually every objective measurement, my sola tubes "intrude" far less than all the skylights or other solar panels in the neighborhood (mine occupy 1% of roof surface

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[1] As noted above, although State law has removed solar panels and other systems from HPC oversight, the City has chosen not to updated the Guidelines language to conform to State law—or make them less inaccurate for residents). Aff. at para. 27.

compared to 20-30% skylights), and as to volume or height (compare 1 cubic foot sola tube with a 16-18 cubic foot air conditioner. Instead, my sola tubes are not much bigger than the pan vents, stack pipes and such (some of which are necessary visible from the street depending on room location they are venting). Their "intrusiveness" is *de minimus*—truly "minor" just like the HPC's own architecture-expert member said the were.

Neighbor Attorney David Reicher (the person most effected by any view of my sola tubes) provides a cogent, unbiased, and persuasive description of the minimal impact of my project:

> "I view the Sola-tubes as unobtrusive and unobjectionable both during the day and in the evening. Although I do have direct views of the Sola-tubes and the roof from inside and outside our house, I did walk around the corner block for other views from the street level and noticed that the Sola-tubes are blocked from numerous views by the North condo building and certain trees on the property. With respect to my direct views at night, I note that they are hardly noticeable when lit up, particularly when contrasted to the multiple larger lighted windows from the 4-story apartment building directly West of the La Budde Condo that towers over the condos and dominate our Western view far more than the small Sola-tubes.... I certainly believe they are unremarkable additions to this property. ... We do not object to the Sola-tube that have been put in place."
>
> See, Reicher letter at pages 1-2. Emphasis added, included with Exhibits provided at COA hearing; also attached as Exhibit to Affidavit.

It is particularly notable in that Atty Reicher's report was made when the most prominent, front sola tube was in place—which I have since removed in a gesture of good faith and compromise.

Along with Reicher, <u>every adjacent neighbor provided letters in support</u> at the COA hearing and are in the City's files.

Even if, for the Sake of Argument the Guidelines Applied, Where the Guidelines Are Silent, the HPC Has Routinely Permitted a Wide Variety of Roof-Mounted Objects, Including Large Roof-Mounted Air Conditioners in Plain View, Based on Loose Notions of Necessity, Even Though There Is Nothing "Period" or Aesthetic, About Historically Anachronistic Rooftop Air Conditioners.

When the residences in the District were built, primarily between 1900-1930, the only roof structures they contained, if any, were chimneys.

Since then, with the advent of technology and living standards, the HPC now allows a variety of roof-located structures and appliances visible from the street, including:

- Whole-house air conditioner appliances perched on roofs next to chimneys or on roof tops, in plain view of the street
- Stack pipes
- Vent pipes
- Boiler/furnace exhaust chimneys
- Pan vents
- Satellite TV dishes
- Onion-dome shaped rotating vents
- "Escape hatches" on roofs
- And even, whimsically, plastic unicorns at Christmas

While the City prefers roof protrusions to be located on the rear or side of roofs rather than on front facing slopes, it has routinely allowed front and side-facing skylights (so long as they don't face Lake Drive) and roof vents, and air conditioners as (the latter as "necessities" because "people need air conditioners"). And, of course, it must permit solar energy systems located where optimally efficient.

Even if, for the Sake of Argument, the HPC Could Exercise Oversight, The Sola Tubes Do Not Contravene Either the Letter or Spirt of the HPC Guidelines When Properly Applied.

Even if the sola tubes were construed under the Guidelines, they would —as the HPC architecture professor member notes below—pass muster. They are entirely in character with the unique Mid Century or Modern Movement Style of my condo—the only such examples in the District.

As noted in its application materials when the District applied for historic designation, my condo is extremely discordant in size, style and age, as an unadorned Mid Century Modern Movement (MCM) design, about half the size of the typical neighborhood mansion. In a description of the neighborhood that rightly preens with pride (and, alas, elitism) over its stodgy mansions, our Condos were particularly called out as, at best, "unsympathetic" to the area.

'Mid Century Modern' or 'Modern Movement Style' describes an esthetic that includes architecture built between 1945-1975 characterized by minimalism and "**ample windows and open floor plans**" designed "**with the intention of opening up interior spaces and bringing the outdoors in.**" (See, Wikipedia, Mid Century Modern, accessed 9/14/2018; emphasis added.)

Such spaces are designed to be flooded with natural light. In function and form, MCM housing was "**targeted to the needs of the average American family**" and MCM architects were "**pioneers in the incorporation of passive solar features in their houses.**" *Id.* [Emphasis added].

This describes the my condo in a nutshell: its tall sweeping banks of windows, modest scale, and open floor plan. It would be far more in character in Fox Point, a neighborhood predominated by MCM houses, where skylights and sola tubes abound, both original and as later improvements. The sola tube project, in the parlance of the Guidelines, is entirely "sympathetic" and coherent with the integrity of the MCM unique to this residence.

If the HPC engaged in a fair, good faith application of the mandatory balancing test, it could readily grant my COA and be able to limit its precedence based on its unique historic style.

In fact, there is ample precedent in the District of the HPC applying the balancing test 100% in the homeowner's favor—even when doing so contravened both zoning and HPC rules, thus ignoring the "overall character of the district" prong, where the nonconforming (and unsightly) improvement was found to be in keeping the house's particular architectural idiom.

For example, the double-lot mansion at 2743 N. Lake was permitted to erect a solid, fortress-like "orange brick wall varying from 6' to 8' feet" tall, not counting the additional height added by a "cast stone cap" along its side and front property lines (on top of a 1-2 ft elevation), just inches from the front sidewalk. *See, Staff Report to the Milwaukee Historic Preservation Commission, dated July 21, 1997, Agenda item 6.K for 2743 N. Lake Dr. (HPC files).*

Although the HPC noted that this giant wall contravened the City's zoning rules on fence height and placement—as well as the HPC's rules maintaining the "open, park-like" setting in the neighborhood, it granted the COA for the wall anyway. It did so based solely on the unique style of the house, finding the fortress wall "entirely in keeping with the particular architectural style of the house", regardless of overall neighborhood considerations[2].

It is unclear when and why—or pursuant to what objective standards of uniformity and fairness— the City will permit substantial changes in precedent (not just for fortress walls but even for uplighting it finds garish; *see, HPC staff presentation on the uplighting project in Affidavit*)—and put all the weight in the homeowner bucket of the balancing of interests test and none in the 'overall character of the district" bucket.

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[2] The homeowner sought so many changes, that initially the number and scale of remodeling proposals i were such that the overall result was overwhelmingly "confusing" to the HPC staff. Ibid. Ultimately, the homeowner horse traded away some asks but was permitted others, including this precedent-setting solid 8-10 ft high fortress wall running along its front yard. In another example of perhaps 'go big and bash', see the HPC's extensive files on 2604 N. Lake. The homeowner made half a dozen non-conforming remodels without a COA and then sought dozens of changes contravening the Guidelines. At the end of the day, and after spending significant legal fees, he traded away some desires but got to keep a number of substantial changes that contravened the Guidelines, including a front yard patio, zig-zag front walk, solid orange brick wall 6-8 ft high along its sidewalk and new skylights. See materials presented at the COA and ND hearings.

There has been suggestion that my particular project case involves the latest spite project by an oft-complaining neighbor (from blocks away). But even so, the HPC has permitted a homeowner to maintain a substantial, highly visible, non-compliant outdoor feature, requiring him to make only nominal changes—even when the complainant is the next door neighbor.[3]

In light of this, it would be wholly appropriate for the HPC to grant my COA, as entirely in keeping with the MCM style of the Condo, while easily and rationally preventing a sola tube "free for all" in the neighborhood, since there are no other MCM properties in the District. Arguably, it could do so consistent with its actual application of the Guidelines, regardless of exercise of the "Chairman's discretion".

Even if, for the Sake of Argument, the HPC Had Oversight of this Matter, the HPC Routinely Departs From its Guidelines To Adapt to Changing Styles and Preferences. For Example, the Agenda Item Immediately Prior to Mine Involved an Application for Path-Lighting and House Up-Lighting, Which Had Hitherto Been Prohibited in North Point North.

At the 9/4/18 COA hearing, HPC staff gave a slide show presentation of the supposed garishness of illegal exterior uplighting projects around the city, and then granted the applicant's COA for the same, even though, as one HPC member said, doing so would unleash an "uplighting free-for-all" in Northpoint, where it had been prohibited.

The only rationale stated in support by the applicant was "disability". At the hearing, the HPC took note of the applicant's possession of a DOT handicap vehicle hang tag. No HPC member sought clarification on how lighting up trees and architectural features related to ameliorating an unspecified disability (as it might, for example, for path lighting for visually impaired...drivers?) but took this reason as valid and sufficient, and as the only reason for granting the COA for exterior lighting[4].

The Equal Protection Clause Prohibits Disparate Treatment by Local Governments of Similarly Situated Citizens and Requires Fair and Impartial Due

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[3] See, e.g., HPC file for 2623 N. Wahl: homeowner tore out all grass on his hill and on the City's tree lawn and planted terraced herb and vegetable gardens. After his neighbor filed a complaint, the HPC only required the removal of some dirt-sock tiers and the addition of some other plants. The front and tree lawn substantially remain as vegetable gardens.

[4] I was next on the agenda. I offered the HPC a variety of historically and logically grounded reasons that would limit an exception to my Mid-Century Modern style property, and thus prevent a sola tube "free for all" (alluding to its handling of the uplighting COA just heard). The HPC refused to entertain any compromises, implied I was a careless scofflaw and that the retroactive nature of my COA was a significant detriment, barred me from presenting favorable precedence (was even flamboyantly dismissive at times) and said, essentially, that a rule is a rule; can't be changed. (See materials & video references presented to ZND).

Process. The Extremely Disparate Treatment of my Project Violates These Protections.

The materials I submitted with my ZND Appeal are replete with evidence (including citation to time locations on the City's video-recordings of its proceedings) of where I believed the City had engaged in improper bias, inconsistent application of its rules, and reliance on improper grounds. I will not duplicate those materials but merely deem them held in reserve and available.

Lastly, the City's Own Architectural Expert Determined the Sola Tubes Would not be a Problem at All and Would Pass Muster with the HPC—Unless the Personality Biases Intervened and Overrode Objective Metrics and Considerations.

The HPC staff shared its proposed determination for my Sola Tube COA application on a Thursday afternoon, just two business days before the hearing and right before the Labor Day holiday weekend. I consulted informally with a real estate lawyer who suggested I reach out to the long-time HPC member who is an architectural expert and UWM professor.

After reviewing my the materials for my COA application submission, the HPC board member in his reply email dated 8/31/01 (*copy included with exhibits of ZND appeal*) thought the Sola Tubes would easily pass muster:

> Susan,
>
> Seems pretty minor to me. I don't have a problem with it and I don't think you will have a problem with the board. However, it is a board, several different people and **personalities**. So, I can't say definitively that it will be accepted on Tuesday, **however, I'd be very surprised if wouldn't**. [Emphasis added].
>
> Matt.

Conclusion and Relief Sought

It would be a fair statement to say I've devoted energetic resources in pursuit of my appeal. Some might even opine I'm making a 'mountain out of a molehill'.

However, as noted at the outset of my Affidavit, the City has draconian forfeiture powers at its disposal even when it zealously pursues a course that is (so puzzlingly) contrary to plain law. (And I believe it has run roughshod over my rights in maintaining the stance it has).

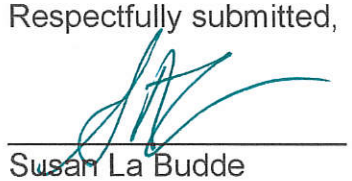
But no matter how novel—or how ugly—one may find sola tubes or solar panels or other solar energy systems, Wisconsin law prohibits a historic district from placing "any restrictions", subjective, asethetic, or otherwise, on their installation or use. This includes any rules on where they can or cannot be located if such rules increase cost or decrease efficiency.

Wisconsin has mandated that long term renewable energy concerns, focused on saving our planet, trump provincial historical societies' concerns about fossilizing in place a particular historical aesthetic.

I therefor respectfully request relief in the form of:

> an immediate abatement and dismissal of existing and threatened fines and a determination that my two modest sola tubes be permitted to remain, consistent with Wisconsin's law explicitly protecting solar energy systems from the (over)reach of local historic districts;
>
> or in the alternative, a determination they are entitled to a COA under the mandatory balancing of interests test of the Guidelines, especially given the scale and departure from any norm are minuscule compared to other huge non-conforming projects that have been permitted in the District, for a wide variety of reasons;
>
> reimbursement of the legal fees I have incurred in defending this matter;
>
> recompense for the reduction in value of my property relating to the cloud on my title created by the City's illegal removal order and imposition of fines;
>
> and
>
> such other relief the reviewing committee considers just and equitable.

Respectfully submitted,



August 29, 2019

Susan La Budde
2581 N. Terrace Ave.
Milwaukee, WI 53211

AFFIDAVIT IN SUPPORT OF APPEAL

Introduction

1. My name is Susan La Budde and I am an adult resident of the State of Wisconsin, currently residing at 2581 N. Terrace Avenue, Milwaukee County, 53211-3821 (Condo or Subject Property).

2. I make this affidavit based on personal knowledge, and after reviews of the HPC files, in support of an appeal from an adverse determination of the Milwaukee Historic Preservation Commission (HPC) and fines levied by the Department of Neighborhood Services (DNS) relating to a sola tube project at the Subject Property.

3. Most recently, on August 8, 2019 I received a letter dated August 6, 2019 seeking to impose fines of $203 relating to a City order to remove 2 sola tubes. I intend to protest this fine and not pay that portion of my property tax bill if it is included therein. A copy of the DNS letter is attached to this City's single page appeal form included with this Affidavit.

4. I first learned the sola tubes were an issue only when I received a citation letter from the DNS in July, 2018, shortly after I had moved in and had them installed. I hired a lawyer who advised me to apply for a COA retroactively promptly. (I have since learned from a different lawyer, more versed in the subtle informalities and horse-trading of local politics, that it might have been more fruitful to negotiate with HPC staff rather than file for a Certificate of Appropriateness (COA), which is what the DNS letter commanded. (Unfortunately, neither lawyer was familiar with the State's laws protecting solar energy systems.)

5. I filed the COA application in late July, 2018; and the hearing was held on September 4, 2018, where the rear sola tube was approved and the other three denied. I appealed that adverse determination to the ZDN in October, 2018 which declined to alter the HPC's determination.

6. I bring this appeal as of right.

7. When I appealed the HPC's adverse COA determination to the ZND, which was also an appeal as of right, the ZND (chaired by the same person who chairs the HPC, Ald. Bob Bauman) at times implied that the topic of my appeal was somewhat frivolous as a first world issue not implicating more serious problems or larger scale matters, and thus was due less than serious consideration.

8. Nevertheless: (a) an adverse HPC determination was appealable to ZND as of right per the City's own specified procedures; and (b) failure to comply with City rules can result in a taking of one's property: according to the DNS letter imposing fines, unpaid fines will be added to my property tax bill. Under Wisconsin law, non-payment of taxes can lead to seizure, forfeiture and sale of my property against my will with no restitution. As City Clerk Jim Owczarski described the process to me at a meeting in his office a few days ago on August 27, 2019, the City can foreclose and take title to a $300,000 house in collecting on $1,000 of fines with no further redress or recompense to the homeowner. He also said HPC's determination is final and unappealable, no matter what; and the only next step is pay or get foreclosed upon for unpaid fines. When I asked, he said the City has foreclosed on other homes solely for unpaid HPC fines. Accordingly, I make this appeal as of right and request it be given respectful due consideration.

9. A sola tube is 14 inches in diameter and projects above the roof line to collect, magnify, redirect and store solar energy. The approximately 4 inch dome forming the top of the sola tube is translucent, and sits on top of a slim opaque metal base. At the low or down side of the roof the entire sola tube projects just about 6-7 inches above the roof surface, and at the high or up side, about 3-4 inches. This is on par with a multitude of other roof structures found on every roof in the District. The modest dome of the sola tube both helps it collect solar energy and to shed snow and debris that could impair its function or result in leaks.

10. A sola tube occupies just over a single square foot of roof surface, which is much smaller than a typical skylight or roof air conditioner or single solar panel. Unlike many roof vents and pipes, no part of the sola tube projects above the roof peak (such as the roof vent of the sole complaining person, identified by my alderman to me by name and address; in my research of the HPC files I came across innumerable complaints made by this same person, some of which the City acted on but others were acknowledged not to be germane. And while the DNS has an anonymous online complaint system now, the City's files are replete with emails and other communications identifying her. It has been suggested to me by long term residents that this matter is perhaps just another neighborhood spite project by a perhaps hyper-zealous historicist unaware of all applicable laws).

11. I originally installed 4 sola tubes: one on the **rear** slope of my roof, one on the **front** slope, and two on the **north side** slope of the roof.

12. The HPC approved the **rear** sola tube.

13. I voluntarily had the **front** sola tube removed in July 2019 and was able to patch the roof with the few shingles left over from a 2011 re-roofing project.

14. Only the 2 north, **side facing** sola tubes remain at issue and are the subject of this appeal.

15. Prior to installation, all other condo residents unanimously approved the sola tubes.

16. No part of my sola tubes are visible from Lake Drive. Technical information about sola tubes was presented to the HPC at my 9/4/18 hearings, as well as the testimony of the installer, a 30+ year installed of such systems in the metro area.

City's Abandonment of its Former Annual Written Notice to Single-Family Residents of the Existence of a Historic District.

17. The Subject Property is apparently located within the boundaries of the NorthPoint North Historic District (District). (Though, as noted below, there is substantial uncertainty whether, as a Condo, it was considered subject to the District's Guidelines).

18. There are no physical signs anywhere explicitly designating the fact, scope, or nature of the District. Nor are there any other discernible boundaries or other tangible indicia (such as one might see demarking a residential subdivision).

19. The City has at times endorsed the idea of a "signage system" identifying the neighborhood, similar to other Milwaukee neighborhoods, but cannot agree on how to do it. See, HPC Staff Report re 2604 N. Lake, dated 8/13/2007 by Paul Jakubovich.

20. As recently as the 2000s, in a document entitled "**Annual Historic Preservation Letter - [year]"** (Annual Letter), the City sent annual notices to every single-family residence in the District notifying them of the existence of the historic district and providing information on the requirements and limitations imposed therefore, the need for a COA, and a sample COA form.

21. This Annual Notice Letter was not sent to Condos or Apartment buildings, just to single family residences in the District. In the copy retained in its files, the City attached the distribution list of the recipients in the District who received the mailing. The distributees are not arranged alphabetically, instead the addresses are arranges geographically, as they align in the neighborhood. (A copy of the letter and excerpt of its attached address list is attached hereto as an Exhibit).

22. In these Notice Letters, the **City has treated the 4 BT Condos as exempt from HPC rules, omitting them from the list of recipients**.

23. In these Notice Letters, **the City has treated the adjacent 4-story apartment buildings around the corner on the 2800 block of East Belleview as exempt from HPC rules and omitted them from the list of recipients.**

24. In these Notice Letters, **the City has treated the 6-unit apartment building in the middle of my block, 3 doors down from my condo at 2557 N Terrace, as exempt from HPC rules and omitted them from the list of recipients.**

25. Accompanying the attached Exhibit showing the City's data relating to Annual Notice recipients on my block (2500 N. Terrace and environs) is a chart of the same neighborhood area I obtained from the HPC. I have annotated it to show the condo and apartment properties omitted from the Annual Notice letter).

26. In September 18, 2018, I met with City Clerk Jim Owczarski and one of the topics we talked about extensively was the lack of City notice to residents of the existence of the District and my several proposals for cheap and efficient ways to give notice, e.g., to new residents who automatically receive an assessor inspection letter.

27. At no time during this 9/18/18 meeting did Jim mention that the City used to provide annual notice as recently as a few years ago but had discontinued it. I met with Jim again on 8/27/19 in his office and asked him about the Annual Notice letters, which he said had been discontinued due to budget reasons. He acknowledged their usefulness and said that the City is working on a new version of an annual notice letter with the help of outside funding. He stated it would be even better if a notice letter went to twice a year. (He also shared with me his perspective on the purpose of the pro-homeowner Wisconsin solar energy statutes as specifically directed at local historic preservation districts. When I asked him why the City did not update the Guidelines to reflect these changes, he said the City decided not to do so).

28. As a result of the lack of any effective notice to residents of the existence of a the District, the current failure rate of COAs—that is, the approximate percentage of COAs that are submitted retroactively after an unwitting owner has already undertaken improvements—is about 20-30%, per an informal 'guesstimate' Jim Owczarski gave me on 9//18/18. When I met with him on 8/27/19, he confirmed this range, though indicated it might be a bit lower.

30. Jim also told me back on 9/18/18 and confirmed again on 8/27/19 that the HPC relies solely on the building inspection department to alert residents to the existence of a historic district, through the permit application process.

31. He acknowledged to me this does not catch every remodeling project, because the HPC regulates a large number of features that do not require any building permit whatsoever, including re-roofing, landscaping, hardscaping, mailbox color, downspout material shape and color, children's play sets, flower pots, plant heights, and the like.

32. The City routinely issues retroactive COAs, without the retroactive nature being counted against the applicant. However, in considering my COA, the HPC was highly pejorative about the retroactive nature of my COA and explicitly—and improperly— relied on this aspect in its 9//4/18 decision and in the ZND's treatment of my October, 2018 appeal. (See Appeal material to ZND including citations to video run time locations of the City's video recordings of these proceedings).

33. The HPC lumped my Sola tubes in with the category of Skylights for purposes of construing the Guidelines. However, a sola tube is not a skylight and they differ in a number of visual, structural, functional and operational effects. As a solar energy system, they are even given the same special tax treatment under Federal tax law as solar panels and other renewable energy systems.

34. A skylight is a transparent panel (typically flat glass, but may also consist of a domed acrylic/plastic bubble) in a rigid metal frame that is situated parallel with a roof surface and is installed by cutting through load-bearing roof structures. It provides for the direct unmediated transmission of sunlight to an interior, can cause fading of interior furnishings, and the light travels through the interior space as the sun moves through the sky. It merely transmits light, but does not collect, convert or store it for later use. Skylights receive no tax credits.

35. A sola tube is slim flexible metallic tube that slips between existing joists and roof structures and does not result in any cutting or disturbance of load-bearing supports. Its interior cylinder is lined with highly reflective material to concentrate, magnify and deflect light into the interior that is collected and direct from its translucent dome top. The light is then filtered through a ceiling diffuser, providing a constant brightening without the glare, movement or sun-bleaching effect of a skylight's direct sunlight.

36. The sola tube also has a deferred collection and storage mechanism that collects, converts and stores daylight and, pursuant to a photosensitive timing device, later releases the stored solar energy into the interior after sunset, as a moon glow feature. Sola Tubes are eligible for 30% federal tax credits (and other state incentives). As a result of my sola tubes, I do not need to use lights in the rooms they serve.

37. As a practical matter, skylights are prone to leaking and to collect snow, dirt (visible from the interior), leaves and other debris on their surface. The curved shape of the sola tube is designed both to enhance the collection of light and to shed debris and snow, and to prevent leaks.

38. A sola tube takes up only a fraction of the roof surface area that a typical skylight does.

The City's Own Architectural Expert's Opinion that My Sola Tubes—Even the Front Facing One (*Since Removed*)—Do Not Contravene HPC Guidelines and that the HPC Would Likely have "No Issues" with the Sola Tube Project, Unless a Personality Intervened.

39. The HPC shared its proposed determination for the Sola Tubes just two business days before the 9/4/18 hearing and right before a long holiday weekend. I consulted informally with

a real estate lawyer who suggested I reach out to Prof. Matt Jarosz, who is an architectural expert and professor at UWM and an experienced, long-time member of the HPC.

40. Just prior to the September 4, 2018 hearing, I sent an email to UWM Architectural Professor Matt Jarosz, along with the materials for my retroactive COA.

After reviewing my submission, Professor Jarosz in his reply email dated 8/31/01 (copy included with exhibits of ZND appeal) thought the Sola Tubes would pass muster:

"Susan,

Seems pretty minor to me. I don't have a problem with it and I don't think you will have a problem with the board. However, it is a board, several different people and personalities. So, I can't say definitively that it will be accepted on Tuesday, however, I'd be very surprised if wouldn't." [Emphasis added].

Matt"

Examples Where the HPC Often Adapts the Guidelines and Sets New Precedent to Adapt to Changing Technology and Subjective Tastes; It Even Did So Simultaneously with Denying My COA.

41. Even prior to the State law requiring the HPC to permit roof mounted air conditioners, which are discretionary, life-style rather than necessary improvements, the HPC granted COAs to visible, roof-mounted A/C appliances, even though they are highly anachronistic and are not original to the District's 1900-1930 period of historicity. See, e.g, the A/C roof units on the Tudors t 2370 and 2506 N. Terrace. (Photos provided with Exhibits to ZND appeal).

42. See also the HPC file and COA for the double-lot mansion at 2743 N. Lake Drive, where a 6-8 foot solid brick fortress like wall was erected along its front and side property lines, even though doing so violated City fencing height zoning rules and HPC rules on maintaining an open park like atmosphere. A review of the HPC's files reflects horse trading, where the homeowner proposed so many non-conforming changes and modifications it conceded some but was permitted signifiant others (including the wall, no matter how unsightly).

43. One of the most recent examples of the HPC changing its interpretation of its rules and precedents has to do with exterior lighting in both the Concordia and North Point North neighborhoods. By chance, the agenda item immediately prior to the mine at the September 4, 2018 HPC hearing involved "uplighting" and "path lighting", which hitherto had not been allowed. (**COA # 180667**). (Video at 6:40 to 22:41).

44. Allowing these changes the HPC acknowledged departed from "consistency" and its prior rules. (Video at 6:40 to 22:41).

45. Nevertheless, Staff member Tim Askin recommended that a number of proposed "up-lights" be "allowed to stay… under the Commissioner's discretion." The purported rationale was "disability". When asked, the applicant showed his "disabled" hang tag for a car, but no other information. No connection or further elucidation was sought between the DOT issued hang tag and the nature of disability that would be alleviated by uplighting of trees, bushes, and architectural features. Ibid.

Annual Notice Letter re existence of Historic District and COA Requirements. Sample from attached address list includes

March 27, 2000

Dear Property Owner:

Re: Annual Historic Preservation Letter -2000

The Milwaukee Historic Preservation Commission is proud of our city's heritage and of your role in keeping this legacy alive. Milwaukee's historic districts were created to enhance the identity of city neighborhoods, to promote awareness of the charming housing stock here, to increase property values and to encourage new ownership. Your commitment to maintaining your property contributes invaluably to our success in achieving these goals.

Preserving items such as windows, doors, porches, railings, chimneys, brick finishes, wood siding and landscaping features enhances the appearance and value of your house. Because of their unique characteristics and intricate details, older homes require owners to exercise special care when undertaking repairs. Fortunately, **many property owners in historic districts may be eligible to qualify for the 25% State Rehabilitation Tax Credit program or a local rehabilitation grant.** We encourage all residents of locally designated historic districts to learn more about these programs by contacting the State Historical Society of Wisconsin at (608) 264-6500.

Because of the need to preserve our heritage all exterior repairs in a locally designated Historic District require the issuance of a Certificate of Appropriateness before work begins. I am glad to report that the process of obtaining a certificate has become faster and more convenient than ever before. Staff now has the authority to approve a Certificate of Appropriateness administratively for most tuck-pointing, landscaping, fencing, signage and window or door replacements (including security windows and doors). This means that an application can be approved without Commission review when it meets the design guidelines for the district. A copy of the preservation guidelines and two books entitled *As Good As New* and *Living With History* can be acquired for free or at nominal cost by calling 286-5705 or stopping into the Historic Preservation Section, 809 North Broadway.

For your convenience, we have enclosed a copy of the Annual Preservation Meeting Calendar, a Certificate of Appropriateness application for any proposed work and a copy of the tax credit guidelines. If you have any questions about historic preservation or your eligibility to qualify for the rehabilitation tax credits please feel free to contact Brian J. Pionke, Historic Preservation Officer, at 286-5705 during regular business hours.

Sincerely,

Julie A. Penman

Julie A. Penman
Executive Secretary
Historic Preservation Commission

Attachments

David M. Reicher
2905 E. Belleview Place
Milwaukee, WI 53211
dreicher@foley.com
(262) 308-2256

September 3, 2018

Hand Delivered
Milwaukee Historic Preservation Commission
Zeidler Municipal Building
841 N. Broadway, Room B-1
Milwaukee, WI 53202

Re: Certificate of Appropriateness (COA) for Susan La Budde at 2581 N. Terrace Avenue, Milwaukee, WI 53211 (the "La Budde Condo") for Sola-tubes

Commission Members:

We have owned and lived in the Henry Harrison Coleman House for over 28 years. Our home is located on a double lot located on the Southeast corner of the intersection of North Terrace Avenue and East Belleview Place. On North Terrace Avenue, we are the property directly East of the four condominiums of which the La Budde Condo is one.

While at home, I spend most of my time in the West rooms facing the La Budde Condo and in our backyard, from which the La Budde Condo is very visible. I suggest it is a safe bet that over the last three decades I have spent more time viewing the La Budde and other condominiums than anyone else in Milwaukee.

I understand that, being new to the neighborhood, Ms. La Budde was unaware of the requirement for a COA and filed her application after having installed several roof top Sola-tubes. I also understand that someone has objected to the installation of the Sola-tubes in connection with her COA Application.

Being long-time residents of the North Point North Historic District (and for 12 years prior to that, homeowners of a house in the 3200 block of North Summit Avenue built in 1904), we certainly appreciate the importance of the District and the role of the Commission in avoiding "potential harm to the historic character of [a] building and the unique characteristics and intricate details older homes have." Over the decades, we have gone through the COA process on numerous occasions.

I view the Sola-tubes as unobtrusive and unobjectionable both during the day and in the evening. Although I do have direct views of the Sola-tubes and the roof from inside and outside our house, I did walk around the corner block for other views from street level and noticed that the

Sola-tubes are blocked from numerous views by the North condo building and certain trees on the property. With respect to my direct views at night, I note that they are hardly noticeable when lit up, particularly when contrasted to the multiple large lighted windows from the 4-story apartment building directly West of the La Budde Condo that towers over the condos and dominate our Western view far more than the small Sola-tubes.

I understand that the purpose of the COA is "the Commission's written affirmation that a proposed change is sympathetic to the historic character of the property and is consistent with the intent of the ordinance." As I am sure you know, the original February 2000 National Register of Historic Places Registration Form described these 1970-1971 built properties as: "[T]hese two-story, brick–veneered Modern Movement duplexes with very-low pitched roofs are out of scale with the rest of the district and are unsympathetic in character." Although I am not suggesting that these Sola-tubes (which I understand are energy efficient sources of light) would be "unsympathetic" to the historic homes in our district, I certainly believe that they are unremarkable additions to this property.

We do not object to the Sola-tubes that have been put in place. Thank you for considering our observations, and please do not hesitate to let me know if you have any questions.

Very truly yours,

David M. Reicher

DOC # 10768357

RECORDED
04/17/2018 09:17 AM

JOHN LA FAVE
REGISTER OF DEEDS
Milwaukee County, WI
AMOUNT: 30.00
TRANSFER FEE: 1,053.00
FEE EXEMPT #:
*****This document has been electronically recorded and returned to the submitter.*****

State Bar of Wisconsin Form 8-2000

CONDOMINIUM DEED

Document No.

THIS DEED, made between Sherry L. Johnston a/k/a Sherry Johnston, an unmarried individual, Grantor, and Susan La Budde Grantee.

Grantor, for a valuable consideration, conveys to Grantee the following described real estate, in Milwaukee County, State of Wisconsin

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Grantor warrants that the title is good, indefeasible in fee simple and free and clear of encumbrances, except terms, provisions, conditions and restrictions contained in the Condominium Ownership Act for the State of Wisconsin and/or contained in any of the "Condominium Documents" (consisting of the aforementioned Declaration and Condominium Plat, the Bylaws, any Articles of Incorporation of such Owner's Association, and any Rules and Regulations adopted pursuant to the Declaration or Bylaws) and all amendments to any of those Condominium documents and municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility, municipal and association services, easements for performance of association duties, recorded building and use restrictions and covenants, and general taxes levied in the year of closing.

Recording Area

Name and Return Address:
Susan La Budde
2581 N. Terrace Avenue
Milwaukee, WI 53211-3821

Tax Parcel No.: 318-0412-200

This is homestead property.

Grantee, by acceptance of this Deed, agrees and binds Grantee and all his/her heirs, representatives, successors and assigns to all the terms, provisions and conditions of the Condominium Documents and all amendments thereto.

Dated: 4-9-18

Sherry L. Johnston

AUTHENTICATION

Signature(s): _____ authenticated on

_____.

_____

* _____

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
authorized by Wis. Stat. 706.06)

THIS INSTRUMENT DRAFTED BY:
Jeffrey P. Patterson (ptc)
State Bar of Wisconsin No. 1005690

(Signatures may be authenticated or acknowledged. Both are not necessary.)

*Names of persons signing in any capacity should be typed or printed below their signatures.

ACKNOWLEDGMENT

Jeffrey M. Brewster NOTARY PUBLIC STATE OF WISCONSIN

STATE OF WISCONSIN)
) SS.
WAUKESHA)
County

Personally came before me this 9th day of April, 2018 the above named Sherry L. Johnston, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Signature

JEFFREY M. BREWSTER
Print Notary Name

Notary Public, State of WISCONSIN;
County of MILWAUKEE.
My Commission is permanent. (If not, state expiration date: 8/14/21)

CT-5039448

54. The vast majority of the District's mansions—some 90%—were built between 1900-1930 and part of the "cohesiveness" of the neighborhood is enhanced by most buildings having "masonry" exteriors. *Id.* at 3. Tudor, Georgian, and Colonial styles predominate, among others, and the architectural pedigrees include Alexander Eschweiler, Cornelious Leenhouts, Frank Lloyd Wright, and Thomas Van Alyea. *Ibid*.

55. Although the Subject Property contains a handsome masonry brick exterior, it is built in the minimalist "Modern Movement" or "Mid Century Modern" style, making it highly discordant with the ornate aesthetic of the neighborhood (whose exteriors tend to sport gingerbread, Tudor or Neo-Classical details), a fact explicitly acknowledged back when historic designation was sought for the District, which described it as "unsympathetic" to the neighborhood. Id.

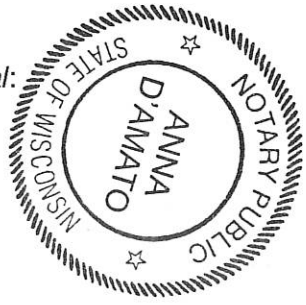
56. Objectively observed, the immediate neighborhood of my condo is striking in its diversity of styles and upkeep, its departure from the neighborhood norm, and utter lack of any cohesiveness of architectural style, residential use, or other feature that would suggest it is in a historic district. It utterly belies any sense that we are located in a historic district. The immediate neighborhood next to my condo consists of: single residences, a semi-illegal rooming house, a multi-family building, high rise apartment buildings, condos, and a parking lot. Additional details and a diagram were provided as Exhibits in may ZND appeal.

Susan A. La Budde

Dated this 29th day of, 2019

Subscribed to and sworn before me this 29th day of August, 2019.

Notary Seal:



Name: Anna D'Amato

Signature: Anna D'Amato

My Commission expires: August 29, 2020

Attachments:

Exhibits
Suplemental Materials

The Following Material is Provided as Supplemental Material in the Event the Reviewer is Interested in Additional Information

Information on Inconsistent and Changing Statements by the City of its Admittedly Unwritten Rule for Existing Skylights and its Description of the Status of Nearby Non-Conforming Properties.

It's not clear why, but the City staff has been inconsistent in its statements relating to existing skylights. I document it here only if, as an extreme fallback position, the City continues to lump my sola tubes in with skylights. It is not necessary to the instant appeal and makes for tedious reading.

On September 10, 2018, I met with Carlen of the HPC to review HPC files and to collect responses to an Open Records request. When I had called her a few days earlier that the property at 2604 N Lake was subject to a pending order for removal of its front (Lake Drive facing) and side skylights. No order for removal was in the files. Instead, a COA issued by Paul Jakubovich had sought removal of only the west/ Lake Drive facing skylight during a roof remodel but not the East facing one. (A copy of this COA was included in Exhibits with my ZND appeal).

Because this COA was more than 10 years old, I spoke with Michael Hosale, the homeowner. He described a contentious, multi-year proceeding with the City, which had cost him over $30,000 in legal fees. And although he had over a dozen violations pending, he said he horse traded with the City and was permitted to keep a number of non-conforming items, including the skylights and a solid 7-8 ft tall orange brick wall along his side sidewalk, which the City allowed based on the precedent set at 2743 N. Lake Drive.

The HPC files for 2 prominent side skylights at 2604 N. Terrace, on the corner of Terrace and Belleview, I found a file memo concluding that the skylights were new construction and had been installed after the creation and historic designation of the District, but that the City had made a determination not to pursue it. A copy of this memo was included as exhibits in my ZND appeal.

Both in informal conversation with me and in their testimony to the HPC on 9/4/18, the HPC staff stated that the large double-wide bubble front skylight at the corner of Bradford and Terrace (2457 N. Terrace) was "slated for removal." However, no order for removal was produced in response to my Open Records request. Instead, the 2016 COA and related materials issued by Paul Jakubovich required removal only of the west facing (toward Lake Drive) skylights; and while the HPC wished it removed, the front / East could be retained at the homeowner's discretion—which it was, after the re-roofing was completed in late 2018. (And featured in the April 2019 edition of the District's magazine). A copy of this 2016 COA was provided in the Exhibits to my ZND Appeal. In part, it provided:

> All work will be carried out as described. Four west-facing skylights will be removed. If possible east facing skylights can be removed as well. Any copper gutters/downspouts will be preserved if salveagable.
>
> Skylight can be removed from this location is [sic] desired. [Photo caption at page 3 of COA; "is" appears to be a type for "if"].

See, COA issued 2/25/16, PTS ID 110305 COA Re-Roof.

The roof, gutter and siding project was completed in late 2018. The house is featured as a neighborhood highlight in the April 2019 edition of North Point North Magazine (whose historic photos also show skylights were not original to the house). In the remodel, the owners tore down a *porte cochere,* revealing another skylight that was permitted to remain; a back garage is now visible with a front facing skylight and a new roof.

Similarly, the owner of 2604 N. Lake undertook extensive renovations to his property, both with and without permits and COAs, at that time the HPC only sought removal of the front-facing skylight, not the side facing one:

> (See, email dated 9/18/2007 from Paul Jakubovich (HPC staff predecessor to Tim Askin) to Dave Rinka (architect for the current owner), detailing scope of changes and COA submissions:
>
> "A COA application needs to be filled out for the addition and must include the following work: Removal of the skylight on the roof slope facing N. Lake Drive; Restoration of the second story window lengthened for a door....". [Emphasis added].

After it became clear from my research and inquiries that I was establishing the argument that (a) the City was articulating a rule it was not, in fact, enforcing at all; and (b) that to do so was tantamount to permitting new construction of non-conforming items, the City changed its rule again.

This time, the City sent me an email in August 2019 saying, that, well, the real rule all along is skylights may be retained, even after re-roofing, no matter how intrusive and visible. Aff. (And even this variation supports my contention that, in such case, this is tantamount to permitting similar non-conforming features in new construction).

But in any event, both off-the-cuff verbal formulations of the rule are wrong and are contradicted by the rule the City **has actually applied in the COA permitting process**, consistently, for at least the past 10-12 years.

And the rule is simply this:

> **any non-conforming skylight may remain, even after a roof or whole-house remodel, so long as any skylights visible from Lake Drive—the main thoroughfare in the District—are removed.**

It said so as recently as 2016 and as far back as 2007/8.

If anything, the City's responses to this line of inquiry shows elements of arbitrariness, inconsistency (intentional or not), and selective enforcement of inconsistent standards.

Evidence and Reasonable Inferences of Bias and Inconsistent Selective in Enforcement.

In my submissions to the ZND, I provided information about omissions, mischaracterizations, and misstatements made by City staff during the COA process. I quoted from the video record of my hearing and documented the inconsistency or omission. I do not wish to rehash. These

extensive materials are already on file with the ZND. I also refer the reviewer 9/4/19 video at about 35:00 -36:00 run time and also 34:21).

At the ZND, Chair Bauman again made much of the fact of the retroactive posture of my COA and invited negative insinuations. He also flatly stated my Deed and all the foundational condo documents (which are from 1971 and predate creation of the District) refer to the existence of the District; he did so in a way that suggested he had read them. In fact, all are silent on this. When I met with City Clerk Jim Owczarski a few days ago, he too stated he thought the Deed contained such notice. While the Deed contains the standard boilerplate reference to laws governing condominiums, it says nothing about the existence of the North Point North District. Because the City has made this (erroneous) contention several times, I attach a copy of my Condo deed hereto.

Information About Purchase of Subject Property and Affirmative Misrepresentations About Existence of a Historic District

I bought the Subject Property in April, 2018 from Sherry Johnson, who was represented by a licensed, experienced real estate broker, Mary J. Liner of Shorewest. Prior to moving in, I undertook several improvement projects including the installation of the four sola tubes to add light to the residence, whose main rooms are dark as they face north and east.

The sola tubes were installed by Brighter Concepts LLC, 1706 E. Capital Dr., Shorewood, an installer of sola tubes for over 25 years in the Milwaukee metro area. The contractor-owner, who is a lifetime resident of the East side, Keith Johnson (no relation to seller), told me that no permits were required to install the sola tubes. He also testified at the HPC hearing on my COA application that he happens to be my neighbor and he had no idea we resided in a historic district, even though he has resided on the East side for over 30 years. He also testified at he HPC hearing that the City does not and has not required building permits to install retro-fit sola tubes, which merely slip between—and do not cut into— existing joists and roof structures.

The Real Estate Condition Report (RECR) provided by Seller Sherry Johnson appeared to me to have been filled out with particular care and precision: several exceptions were manually noted in neat handwriting, and the person who filled it out even took pains to distinguish between "NO" and "N/A" answers. (*See* copy of RECR attached to appeal to ZND).

Line 28 at page 3 of the RECR, which identifies whether the property is located in a historic district, was checked "NO". Per the RECR, Sherry lived at the Subject Property for 19 years. Although it would be unethical to do so, I recently learned of reason to believe that Real Estate Agent Mary Liner herself filled out the COA rather than seller Sherry Johnson, as the latter was residing at her winter residence out West when the Subject Property was listed for sale.

Because the RECR appeared to have been made out with diligent care and attention to detail, I felt I could—and did— reasonably rely on the accuracy and completeness of its disclosures.

The Condo was built in 1971 as a condominium association (Association or BT Association) and its foundational documents have not been amended since. Not a single foundational Association document refers to the existence of a historic district: not the Declaration, not the Bylaws, and not the Deed.

As noted elsewhere, the Condo is designed in the Modern Mid-Century style and is utterly out of character of the older, larger Tudors and Georgians that predominate in the District.

Seller Sherry was the president of the BT Condos for a number of years, including when the Association re-roofed the buildings in 2011, just a few years before she sold me her condo. Sherry applied for the Certificate of Appropriateness (COA) that was required from the HPC for the roofing project. (Although City of Milwaukee Building Code does not require a building permit for a re-roofing project, the MHPC requires a COA as to shingle type and color.)

In the event the reviewer desires to compare my sola tube with a sample of other roof mounted appliances, the charge below presents Comparative Objective Metrics of Size and "Intrusiveness" of Sola Tubes Compared to The Many Roof-Top Appliances and Skylights the HPC has Repeatedly Allowed Year after Year.

The following chart compares my sola tubes to other non-conforming and/or ahistorical roof appliances, apparatuses and protrusions that have been permitted by the HPC over the years on residences just in my immediate neighborhood:

	COMPARATIVE FOOTPRINT	**AND PERCENTAGE OF ROOF COVERED**	
	Footprint of Sola Tube/ Skylight, in square feet	**Approximate percentage of roof slope occupied**	**HPC Dispostion** (See **Section E** below for detail on HPC dispositions)
Subject Property-the 2 ST on the North slope (side)	2.12 sf	**less than 1%** (2.12 divided by 547.25)	Denied
2604 N. Terrace East slope (side)	4 sf (abut 2 by 2')	30% ~ estimate	Installed after District created. Per memo in HPC file, allowed, no order for removal pending.
2457 N Terrace Bubble-domed skylight on East slope (front) of house Newly revealed by removal or porte cochere, skylight on East slop of garage (also newly re-roofed)	6 sf (about 2 by 3')	20%- estimate 10% ~ estimate	**A 2016 COA issued by HPC made removal optional &** only required removal of West facing (i.e. visible from Lake Drive). (see Exhibits to Zoning); remodel also exposed additional front / east facing skylight on newly re-roofed garage.

2604 N. Lake West slope (front)	4 sf (abut 2 by 2')	25% ~ estimate	Allowed, no order of removal pending, even after a re-roof COA required the removal of the front (Lake Drive) but not side skylight.
Bubble domed skylight at **2437 N. Terrace**		Appros. 20-25%	
2567/2569 N. Terrace. Re-roofed March, 2019,	3-4 sf (about 18-24" by 24")		COA issued retroactively (after re-roofing completed); w/o notice April 2019. HPC not aware of skylight/"escape hatch" on South / side slope until I brought it to their attention. Then they refused to communicate with me for almost 3 weeks, then averred it was "definitely not" a skylight but possibly an escape hatch of some sort

	COMPARATIVE HEIGHTS	**AND VOLUMES**	
	Approximate Height and Width	**Approximate volume and footprint**	**Percentage of overall roof area**
Subject Property per sola tube	14" diameter by 12"high or 1.167 foot by 1 foot	1.06 sq. ft ~ footprint each 1.07 cubic ft ~ volume	**Less than One Percent (1%):** 2.2 sq. ft. on roof slope about 547.25 sq. ft. in area

When other objective, measurable analyses are applied, the extent of "visibility" is far less than the nearby skylights by every metric other than height. Even so, the sola tubes are just one-half to one-third the height of the entirely opaque giant rooftop A/C appliances nearby.

(a) ***Materiality & Proportionality of "Visibility".*** The sola tubes occupy an exceedingly small portion of the roof planes they are located on. The two side ones

(North slope) together occupy a total of about 2.12 sf on a roof slope that totals about 547.25 square feet, or a ratio of about 0.4%—**less than one percent (1%) coverage**—hardly material.

(b) **50% Less Visible From Front/ Head On**. The Project is at least 50% less visible, from a head on/direct view, than any of the three skylight. This is because of the extremely shallow pitch of the roof and the 2-foot wide roof overhang—which renders them invisible from the same side of the street and visible only from the opposite sidewalk. The same cannot be said of any other skylight, all located on steeply pitched roofs, all visible from both sides of the street, its entire width.

(c) **Narrower Angle of View and Shorter Length of View** All three skylight projects are on corner lots and thus more widely viewable from a wider range of angles. The Subject Property is not on a corner lot but on a lot sandwiched between two houses (a narrow side yard to the South and just a shared driveway to the North), severely limiting their view to a much narrower angle, comparatively.

(d) ***Other Screening Impediments.*** They are also further obscured by large mature trees. See Reicher letter. Ibid.

(e) **Minimal effect on Roofline.** At times, the HPC indicated that "alteration of the roof line" was the "primary issue with the installation" rather than visibility. (Video at 26:30 run time). When viewed in context and proportion, however, the Project no more alters the roof line than other minor common roof protrusions such as satellite dishes, vent pipes, pan vents, and the like, and incontestably less than roof-located A/C appliances. (See, e.g., photos in exhibits provided with appeal to ZND).

At the HPC hearing the Chair refused to consider any objective metrics whatsoever, was generally and gratuitously (and uncontrollably?) flamboyantly dismissive and derisive, dismissing them as "creative". (See, e.g., video starting at runtime 33:02).

Receipt of A.R.A.B. Appeal Fee

Date:	8/29/19
Received Of:	Susan LaBudde
Property at:	2581 N. Terrace Ave.
Received By:	LME
Check # (If Applicable):	13090 $25.00