WALLY BLEY <u>bley@bleyevanslaw.com</u>

MARK J. EVANS evans@bleyevanslaw.com



1000 West Nifong Boulevard Building 4, Suite 200 Columbia, MO 65203

> 573.443.8385 FX 573.443.8395 www.bleyevanslaw.com

December 28, 2012

<u>Via Regular U.S. Mail &</u> Email: mayor@GoColumbiaMo.com

Mayor Bob McDavid City of Columbia, Missouri 701 E. Broadway P. O. Box 6015 Columbia, MO 65205

Re: Proposed Ordinance Council Bill B375-12

Dear Bob:

The City Council will be considering proposed Ordinance Council Bill B375-12 on January 7, 2013. I represent Fred Hinshaw who is the Managing Member of Niedermeyer, L.C., a limited liability company which owns the Niedermeyer building located on the corner of Tenth & Cherry Streets in Columbia, Boone County, Missouri. I write to you to register objection to the proposed Council Bill.

It seems clear that the triggering event which brought the proposed Ordinance onto the table was the application for a permit to demolish the Niedermeyer building. The application for a permit to demolish the building was made in furtherance of sale of the real estate to a third party purchaser; the property is under contract at this time.

Imposing a six-month abeyance on the issuance of demolition permits will certainly chill the sale of the Niedermeyer apartment building. It will also adversely affect the potential sale of any existing buildings if the buyer intends to rebuild on the lot. The existing ordinances, rules and regulations have been in place for many years, and property owners in the City of Columbia, including Niedermeyer, L.C., have relied upon those ordinances, rules and regulations as they exist. To change the rules suddenly, and unexpectedly in a manner that will adversely affect buyers and sellers, is unjust and arbitrary.

The proposed Ordinance has the appearance of a special law directed to the Niedermeyer transaction. A strong argument can be made that if this Ordinance were determined to be a special law, it would be unconstitutional and unenforceable.

Major Bob McDavid Page 2 December 28, 2012

If the City desires to reconsider its ordinances, rules and regulations as they relate to demolition of buildings, then it should do so in the regular course of its business, not by imposing a six-month curtailment of all demolition projects within the City limits. The affect of this Ordinance will be to diminish the value of certain tracts of real estate within the City, and will adversely affect the economic growth and vitality of our municipality.

I will be out of the State on January 7th, and will not be available to attend the City Council meeting. I respectfully request that you consider my objections raised in this correspondence, and that this letter be made a part of the City record.

Finally, I have attached hereto, and am enclosing with the hard copy of this letter, correspondence from Fred Hinshaw similarly expressing his views on this matter.

Very truly yours,

WALLY BLEY

WHB/zt

Enclosures

Niedermeyer letter to Mayor Council 12-22-12.txt

Mayor Bob McDavid and Council Members City of Columbia 701 E. Broadway P.O. Box 6015 Columbia, Missouri 65205

Re: Niedermeyer Demolition Permit

Dear Mayor McDavid and Council Members:

Niedermeyer, L.C. (a limited liability company), Fred N. Hinshaw, Managing Member, applied for a permit to demolish the building at 920 Cherry Street, said building known as the Niedermeyer Apartments. It is our opinion that because of this application, which is in process, there was a response from folks who do not want the building removed and councilwomen Hoppe then hastily had the staff prepare the proposed ordinance council bill B375-12.

A six month obeyance of demolition permits, which is only a piece of this bill, will accomplish what the opposition desires, that is, the subject contract for sale will not close. The buyers anticipated a timely process under present rules and regulations to move forward with a major project.

when you consider changes of this nature, there are financial consequences. Janet and I lose the financial gain, which is a substanial portion of our estate. When you change the rules, it can result in a taking of property without due process because the market will reflect the changes. Even though the Niedermeyer is not referenced in the bill, the application for demolition was the trigger.

You all know the economic impact a project of this size would have in the community. The buyers want to develope this site to its highest and best use and should be allowed to proceed under present rules and regulations.

We have the utmost respect for the Niedermeyer and its history and have preserved it since the purchase February 28, 1989. The buyers are also respectful and want the site to always be noted as to its significance.

We request that this letter be entered in the minutes of the January 7, 2013, council meeting. My wife Janet and I hold no malice towards anyone or any group as to this matter.

Respectfully,

Niedermeyer, L.C. Fred N. Hinshaw, Managing Member

Niedermeyer letter to Mayor Council 12-22-12.txt

copies

All Council Members Wally Bley, Attorney Collegiate Housing Partners, LLC Van Matre Law Firm December 28, 2012

Mike Matthes, City Manager City of Columbia 8th & Broadway Columbia, Missouri 65201

RE: HPC COMMENTS IN OBJECTION TO APPLICATION FOR DEMOLITION PERMIT

Dear Mr. Matthes:

The City of Columbia Historic Preservation Commission received a Demolition Permit Application for the building at 920 Cherry Street commonly referred to as The Niedermeyer Building on December 14, 2012.

The Niedermeyer Building and its connection to Gen. Richard Gentry, Lucy Wales and Stephens College, Martha Todd Lincoln, William Jennings Bryan, Mark Twain, and other luminaries relevant to the history of Columbia, Missouri and the nation is well-documented. However, the purpose of this letter is to present the material defects in the applicant's request for a demolition permit.

Part II of the City of Columbia's Code of Ordinances, Chapter 6, Article II prescribes the method by which the City Building Official can issue a demolition permit:

1. The building official shall not issue the permit authorizing the demolition until ten (10) working days after the notice has been sent to the Community Development Department.

OR:

2. Until the Historic Preservation Commission notifies the building official that the Commission has no objection to the immediate demolition of the structure.

AND:

3. A permit to demolition or remove shall not be issued until all utilities are disconnected and a performance bond is secured.

Please accept this letter as the City of Columbia's Historic Preservation Commission's strong objection to the issuance of a demolition permit. In addition to the historic ramifications of this demolition, our objection to the demolition permit is based upon several facts:

1. The demolition application is premature.

Chapter 3303.6 clearly prohibits the building official from issuing a demolition permit prior to the disconnection of utilities:

3303.6 Utility connections: Before a structure can be demolished or removed, the owner or agent shall notify all utilities having service connections within the structure such as water, electric, gas, sewer, and other connections. A permit to demolish or remove shall not be issued until:

(1) A release is obtained from the utilities, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed and plugged in a safe manner; and

(2) A bond or other security deposited with the City in the amount of two thousand dollars (\$2,000.00), guaranteeing that the building and debris are removed from the lot within ninety (90) days, the lot graded to comply with Section 3304 and required inspections are completed.

(3) Sewer laterals connecting the building to the City sewer system are to be cut and capped in an approved manner at or near the property line. The cap must be inspected prior to backfill of the excavation.

[emphasis added]

Chapter 3303.6 states that before a structure can be demolished or removed, the owner or agent shall notify all utilities having service connections. Current tenants in the Niedermeyer Building have been notified that their leases will expired in June 2013. As such, the utilities cannot be disconnected and a permit for demolition *"shall not be issued."*

2. The application is not timely because the demolition contemplated is not immediate.

Columbia's building code has certain time limitations for demolitions. For example:

- A \$2000 performance bond must guarantee the building and debris are removed within 90 days of issuing the permit.
- The Historic Preservation Commission notifies the building official that the Commission has no objection to the immediate demolition of the structure.
- The building official shall not issue the permit authorizing demolition until ten (10) working days after the notice has been sent to the Community Development Department.

The ordinance requires the Historic Preservation Commission to be notified 10-days prior to issuing a permit. In this case, a demolition permit cannot be issued because a performance bond guaranteeing that the building and debris are removed from the lot within ninety (90) days as required by Section 3303.6 and Section 3304 cannot be secured.

Based upon the ordinance defining "immediate"—meaning after the 10th day—and "within ninety (90) days" of requesting a permit, it is the opinion of the Historic Preservation Commission that a permit for demolition can only be issued 10-days after the permit is viable (when all utilities are disconnected and a performance bond is secured) and that demolition must be completed within 90 days of the permit being issued. Therefore, the permit cannot be applied for six months in advance.

3. The applicant lacks standing to apply for a demolition permit.

The Demolition Permit Application received by the City of Columbia is signed by Eric Gowin of Contegra Construction in St. Louis. Columbia's code of ordinances requires the "owner or agent" of the property to apply for the demolition permit.

The property at 920 Cherry Street is owned by Niedermeyer, L.C.—a limited liability company with Articles of Organization filed with the Missouri Secretary of State. According to the signature on file with the Missouri Secretary of State, the signature on the Demolition Permit Application does not match the signature for Fred Hinshaw, the sole organizer and registered agent for the Niedermeyer company.

In every sense of the word "agent", Contegra Construction lacks standing to apply for a demolition permit on behalf of Fred Hinshaw d.b.a. Niedermeyer, L.C.:

- Without binding legal authority to execute all deeds and sign all contracts for control of the property at 920 Cherry Street, the applicant cannot apply for a demolition permit for property he does not own.
- Contegra Construction lacks standing to apply for a demolition permit simply because it cannot notify the City of Columbia water, electric, sewer departments of its intent to disconnect service as required by Chapter 3303.6.
- Eric Gowin lacks standing to serve as a registered agent for Niedermeyer, L.C. because he is not a resident of Missouri, as required by Missouri's corporations law.

To allow a person to apply for a demolition permit for property they do not own and do not control creates a dangerous precedent for the City of Columbia.

4. There is no authority to issue an unsigned permit.

In the Columbia Missourian, community development official Patrick Zenner seem to suggest that a demolition permit could be issued unsigned.¹ Respectfully, there is no authority in the City of Columbia's Code of Ordinances to issue an unsigned permit. There is no authority to issue a provisional permit. Nor is there authority to issue a temporary permit pending completion of health and safety actions required by the Chapter 6, Section 3303.6.

5. Demolition incidental to new construction requires a site plan.

Chapter 6, Section 107.2.5 suggests that a demolition permit incidental to new construction requires a site plan to be filed with the City's building official. The site plan is required to show to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, street grades and finished grades. And, in the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

Given the sensitive nature of the surrounding built-environment and zero lot lines within downtown zoning, and because the demolition is incidental to new construction, the application for a demolition permit should be withdrawn until it is submitted with a site plan for new construction as required by the building code.

Thank you for your thoughtful review of these issues. It is the recommendation of the Historic Preservation Commission that the City of Columbia should ignore the application as untimely or reject the application as incomplete.

Sincerely,

Brian Treece, Chair Columbia Historic Preservation Commission

¹ "Zenner said that if a property owner legally submits a demolition application and it's deemed complete, "there is nothing in code right now that can stop someone from tearing the property down." The demolition permit could go unsigned until this summer, however. Zenner said that Tim Teddy, director of the city's community development, would not sign off on the demolition permit until all three requirements were met." ["Councilwoman Hoppe proposes abeyance on demolition permits"; by Dan Burley; Columbia Missourian; Monday, December 17, 2012.]

 Introduced by _____

 First Reading _____

 Second Reading _____

 Ordinance No. _____
 Council Bill No. _____

AN ORDINANCE

establishing a temporary abeyance of demolition permits in the Downtown Community Improvement District; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. Significant residential development has occurred in downtown Columbia in the past few years. Although this development has been beneficial to the City in many respects, concerns have been raised regarding adequate parking, building height and setback requirements and historic preservation. The City Council intends to study these concerns and consider passage of ordinances that address these issues. The purpose of this ordinance is to limit the demolition of buildings in downtown Columbia while the City studies regulations concerning parking requirements, building height and setback requirements and historic preservation.

SECTION 2. No permits for the demolition or removal of a building within the boundaries of the Downtown Community Improvement District shall be issued from the passage of this ordinance until June 18, 2013, except as provided in Section 3.

SECTION 3. The City Council may, by resolution, allow the issuance of a permit for the demolition or removal of a building within the boundaries of the Downtown Columbia Community Improvement District under any of the following circumstances:

- (a) The Council is satisfied that the building to be demolished or removed would be replaced with an acceptable replacement building.
- (b) The Council determines that the building to be demolished is a dangerous structure.
- (c) The Council determines that failure to allow demolition or removal of the structure would cause a substantial economic hardship on the property owner.
- (c) The Council determines that demolition or removal of the building would not interfere with the goal of having reasonable regulations pertaining to parking, building height and setback requirements and historic preservation.

SECTION 4. This ordinance shall be in full force and effect from and after its passage.

PASSED this ______ day of ______, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

	Source: Law	t	(/	ζ	
•	To: <u>City Council</u> From: <u>City Manager and Staff</u>				
	Council Meeti	ng De	ate:	Dec 17, 2012	

Temporary abeyance of demolition permits in the Downtown Community Improvement District.

Agenda Item No:

Re:

EXECUTIVE SUMMARY:

At the request of Council member Hoppe, an ordinance has been drafted that would establish a temporary abeyance of demolition permits in the Downtown Community Improvement District.

DISCUSSION:

The proposed ordinance recites that as a result of the significant residential development that has occurred in downtown Columbia, concerns have been raised regarding adequate parking, building height and setback requirements and historic preservation. In order to allow time to study and consider ordinances addressing these concerns, the ordinance would prohibit the issuance of permits to demolish or remove any buildings in the Downtown Community Improvement District from the passage of the ordinance until June 18, 2013.

The ordinance provides for four exceptions to the prohibition on issuance of demolition permits. The Council, be resolution, may allow the issuance of a demolition permit if:

- 1. The Council is satisfied that the building to be demolished would be replaced with an acceptable building.
- 2. The Council determines that the building to be demolished is a dangerous structure.
- 3. The Council determines that failure to allow demolition of the structure would cause substantial economic hardship on the property owner.
- 4. The Council determines that demolition of the building would not interfere with the goal of having reasonable regulations pertaining to parking, building height and setback requirements and historic preservation.

FISCAL IMPACT:

None.

VISION IMPACT:

http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php

Downtown Columbia is a hip and vibrant district with a diversity of easily accessible businesses, residences, attractions and institutions; it is an exciting gathering place for all types of people.

SUGGESTED COUNCIL ACTIONS:

If the Council wishes to enact a six month abeyance of demolition permits in the Downtown Community Improvement District, the ordinance should be passed.

FISCAL and VISION NOTES:								
City Fiscal Impact Enter all that apply		Program Impact		Mandates				
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No			
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact				
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site				
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes			
One Time	\$0.00	Requires add'I FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #				
Operating/ Ongoing	\$0.00	Requires add'I facilities?	No	Secondary Vision, Strategy and/or Goal Item #				
		Requires add'l capital equipment?	No	Fiscal year implementation Task #				

 \widetilde{T}_{i}

۰