

Memo

To: Columbia City Council
From: Downtown Community Improvement District Board
Date: January 9, 2013
Re: Proposed Demolition Moratorium within the CID

As you know, the CID Board has a unique standing on ordinances occurring within its boundaries and as such, we thank the Council for allowing us the time to comment on this issue.

On Tuesday, January 8, 2013, the Board of the CID voted unanimously in favor of advising the City Council to oppose the moratorium while exploring ways to support historic preservation and retaining a professional to aid in a reexamination of C2 zoning given current environmental factors.

The following issues were addressed in detail during the board discussion:

1) Placing this prohibition on the CID violates the tenets of good planning.

Cities all over the world follow a similar pattern of development. High-density, multi-story buildings are located within the central, commercial core of the city and as you travel further from this center, building heights and density drop until you reach more traditional neighborhoods of low density, one and two story homes. The central core can support this level of density because of existing infrastructure, public transportation systems, and a pedestrian tradition. By freezing development in our commercial core, we're flipping the traditional organization of a city on its head and causing any number of planning headaches.

The CID is our commercial core—and we should emphasize that the CID is all commercial, institutional and high-density residential development. By halting this type of development within the CID, it simply shifts these projects closer to traditional neighborhoods where they will add stress to the existing infrastructure, be completely out of scale next to single story homes, and are more likely to be opposed.

Instead, we should be encouraging high density, mixed-use development within the CID and discouraging it closer to existing low density neighborhoods.

2) Limiting this ordinance to the CID is highly inequitable.

The CID does not include all the areas zoned C2, nor does it include everything commonly referred to as "downtown." In fact, neither the College and Walnut apartments nor the new apartments on Locust adjacent to Lee Elementary are within the CID. Thus, applying this prohibition to just the CID is not only inequitable, it fails to adequately address the issue at hand.

Simply put, the rules are being changed midstream only for property owners within the CID, restricting their options and suppressing their property values. This has a chilling effect on investment in our commercial core as interest is directed to other areas of the city—or simply to other cities—where more certainly can be guaranteed.

3) C2 zoning should be re-examined in a deliberate and thoughtful manner.

C2 zoning has been in place within the CID for decades and investment decisions have been made based on the current rules. A sudden change to these rules freezes investment and reduces trust in local government. The process of changing these rules should be deliberate, thoughtful and involve the constituencies most affected by the rule change. If this process is conducted properly, trust in government will be maintained and investors will have time to adapt to any changes in the system.

We recommend this process be conducted by a professional with the ultimate goal of creating a Council-ready solution that has the support of key constituencies. While a charrette-style process may be appropriate for brainstorming ideas, this process should instead be specific, solution-based, and focused on creating a draft ordinance.

The CID would support this effort and would like to be included as part of this working group.

4) Historic Preservation should be an incentive-based, positive process.

While the ordinance itself was not designed to address the proposed Niedermeyer demolition, the board did discuss other options for preserving Columbia's heritage. Overall, the board supports methods that encourage more historic preservation, rather than prohibiting certain actions.

The SBD (predecessor to the CID) has long supported this type of approach. We placed 100 downtown buildings on the National Historic Register, educated property owners on the history of their buildings, and conducted seminars on how state and federal Historic Preservation Tax Credits could be used to help fund renovation efforts. In addition, we've spent a significant amount of time and effort lobbying the State Legislature to preserve these important tax incentives. We also use our current database of historic properties to help link owners with potential buyers interested in preservation. The simple act of building these relationships helps alert us to potential issues before they occur, increasing the odds of finding a solution. If the city would assist with efforts such as these, it may be possible to preserve more buildings through the use of incentives, rather than through prohibitions.

Although the board does not recommend the city purchase key historic buildings, the option is still open for a private group of preservation-minded citizens to raise money and purchase these buildings on their own, "banking" them until a buyer can be found. This group could be mirrored on national groups like the Nature Conservancy who purchase land, remove it from the market and thus control what ultimately happens to it.

Overall though, we believe this proposal is more of a stick than a carrot and would recommend the city instead institute a comprehensive, proactive approach to preservation. We would be happy to make our historic database available to the city for this purpose.

January 17, 2013

Members, Columbia City Council
City of Columbia
8th & Broadway
Columbia, Missouri 65203

Dear Mr. Mayor and Members of Council:

Thank you for asking the Downtown Columbia Leadership Council to study and take a position on the proposed 6-month abeyance on demolitions in downtown Columbia. This topic was the only agenda item at our meeting on January 15, 2013.

After a very lively and healthy discussion on the subject, the Downtown Columbia Leadership Council voted 8-3 to **support** Councilwoman Barbara Hoppe's recommendation for a 6 month pause in demolitions downtown. However, the Downtown Columbia Leadership Council recommends changing the proposed ordinance's language from the CID area to all C-2 zoning, so as to not give preference to properties outside of the rather small area of CID.

In addition, members of the Downtown Columbia Leadership Council suggested the following as you consider this proposed ordinance:

- A 6-month moratorium is not unprecedented. In 2003, the Columbia City Council voted unanimously to have a pause in demolitions downtown, in order to look at surface parking issues. At that time, many spoke out in favor of the moratorium, including the Special Business District. The six-month moratorium was extended for an additional six months.
- DLC does not feel that 6 months is too much to ask in order for the City to examine C-2 zoning uses downtown in the current economic climate.
- A temporary abeyance is fair for all downtown property owners and creates pressure to adopt a thoughtful policy as downtown Columbia continues to grow.
- DLC members strongly recommend that multi-family use within C-2 zoning needs to be examined, as soon as possible. Areas of discussion should be parking, setback requirements, building heights, sewer requirements, historic preservation, and preserving main floor retail.

Finally, the DLC would like to convey a sense of urgency regarding this issue. As a result of our discussion, a majority of our members feel that if we don't do this now, the City will have to do it at some point.

Thank you for your consideration of these issues.

Sincerely,

Brent Gardner, Chairman
Downtown Columbia Leadership Council

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 375-12

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.

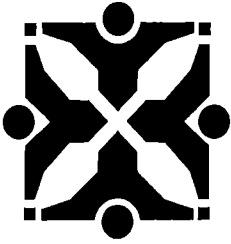
ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor



Source: Law

TD

Agenda Item No:

To: City Council
From: City Manager and Staff

MM

Council Meeting Date: Dec 17, 2012

Re:

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

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, by 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'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	

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MARK J. EVANS
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December 28, 2012

**Via Regular U.S. Mail &
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.

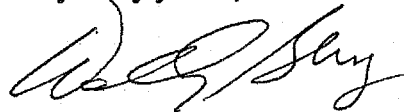
Major Bob McDavid
Page 2
December 28, 2012

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,

A handwritten signature in dark ink, appearing to read 'Wally Bley', written in a cursive style.

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 substantial 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 develop 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 expire 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.]

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January 4, 2013

Via Email: cmo@GoColumbiaMo.com
City Manager Mike Matthes

Re: Proposed Ordinance Council Bill B375-12

Dear Mike:

This is just a follow-up to my prior correspondence to you, dated December 28, 2012, regarding proposed Ordinance Council Bill B375-12. Because I am going to be out of the state on Monday, January 7, 2013, I wanted to share with you my final thoughts.

Please know that my intention is only to provide full and complete disclosure of the position of Niedermeyer, L.C. and Fred Hinshaw relative to this proposed Ordinance.

In discussing this situation with numerous people in the business community, I think it was best expressed by the gentleman who said – “it just isn’t right what they are trying to do.” That pretty well sums up the position of Fred Hinshaw and Niedermeyer, L.C.

After years of working and saving and planning, to have this business opportunity snatched away by virtue of targeted conduct by the City of Columbia just isn’t right. If that eventuality occurs, Mr. Hinshaw and Niedermeyer, L.C. will have no other real option but to seek redress with full legal recourse through the courts.

The effect of this “special law,” the taking of this business opportunity without compensation, and the arbitrary nature of this proposed Ordinance provides Niedermeyer, L.C. and Mr. Hinshaw with a sound and valid basis for making a claim for damages against the City of Columbia.

BLEY & EVANS, L.C.

Re: Proposed Ordinance Council Bill B375-12

Page 2

January 4, 2013

Thank you for your consideration of our position regarding this proposed Ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Wally Bley', written in a cursive style.

WALLY BLEY

WHB/zt

cc: Fred Hinshaw (via e-mail: janfred2@yahoo.com)
Robert Hollis (via e-mail: robert@vanmatre.com)

VAN MATRE, HARRISON, HOLLIS, TAYLOR, AND BACON, P.C.

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EVERETT S. VAN MATRE
(1922-1998)
* ADMITTED IN MISSOURI AND ILLINOIS

January 7, 2013

Bob McDavid, Mayor
Via E-mail: mayor@GoColumbiaMo.com

Mike Matthes, City Manager
Via E-mail: mematthe@GoColumbiaMo.com

Fred Boeckmann, City Counselor
Via E-mail: FAB@GoColumbiaMO.com

Sheela Amin, City Clerk
Via E-mail: skamin@GoColumbiaMo.com

Fred Schmidt, Council Member Ward 1
Via E-mail: ward1@GoColumbiaMo.com

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Gary Kespohl, Council Member, Ward 3
Via E-mail: ward3@GoColumbiaMo.com

Barbara Hoppe, Council Member, Ward 6
Via E-mail: ward6@GoColumbiaMo.com

RE: Collegiate Housing Partners, L.L.C. / Neidermeyer Site

Dear Mayor, City Manager, City Counselor, City Clerk, and Council Members,

I represent Collegiate Housing Partners, L.L.C. ("CHP"), which is the contract purchaser of the property located at 920 Cherry Street in downtown Columbia (the "Neidermeyer Site"). Council Bill B375-12 (the "Moratorium") is scheduled for consideration by City Council at tonight's meeting and it is the impetus for this letter.

The primary purposes of this letter are as follows: (i) to communicate CHP's opposition to the Moratorium; (ii) to inform City Council that CHP would have no alternative but to sue the City if the Moratorium was enacted after CHP purchased the Neidermeyer Site; and, (iii) to point out that the Moratorium is unnecessary. The Moratorium is fraught with problems and it would be challenged on numerous fronts, including as a "special law" violating the Missouri Constitution and as a regulatory taking (i.e., inverse condemnation) without compensation.

Constitutional issues notwithstanding, it should be noted that the Moratorium has other problems. It is arbitrary, vague, and unworkable. For example, a description of circumstances under which a demolition permit could be obtained is so vague that it would be impossible to determine whether the circumstances exist. The circumstances are that City Council must be "satisfied that the building to be demolished or removed would be replaced with an acceptable replacement building." Even if one could guess what "acceptable replacement building" means, there is no way of knowing what would be satisfactory to City Council.

Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.

Mayor, City Manager, City Counselor, City Clerk, and Council Members

January 7, 2013

Page 2 of 3

If one happened to present an acceptable replacement building that satisfied City Council, the City has no procedures in place governing how the applicant or City Staff should then proceed. Whether an acceptable replacement building requirements were described generally (e.g., something similar to what was demolished) or specifically (e.g., an A-frame structure with pink paint), the C-2 zoning regulations do not set forth procedures for review and approval of such requirements.

There are many, negative and unintended consequences associated with the Moratorium. Although the Moratorium may be a weapon aimed at the Neidermeyer Site, it has a blast radius that encompasses a lot more properties. It will hit and has already hit other sites in downtown Columbia. The mere discussion and consideration of the Moratorium has "chilled" downtown development plans in general; not just "student housing" development. I am currently dealing with potential buyers/developers of downtown property that are reconsidering whether to redevelop property in downtown Columbia solely because the Moratorium is being considered by City Council.

The Moratorium will kill the deal between the current owner and CHP regardless of whether there are any alternatives uncovered with respect to the structure on the Neidermeyer Site. CHP must be able to accomplish pre-development activities such as architectural and design work long before the Moratorium would end. As you know from the letters submitted to you from Wally Bley, the attorney for the current owner of the Neidermeyer Site, litigation is imminent if the Moratorium is approved. The owner will lose the sale to CHP and, in addition to causing a "regulatory taking" without compensation, the Moratorium would be a violation of the Missouri Constitution as a "special law" (i.e., it is well known and documented that the purpose of the Moratorium is to stop the currently proposed transaction between the current owner and CHP).

If CHP owned the Neidermeyer Site, it would have no alternative but to file a lawsuit against the City if the Moratorium was passed. The Moratorium would have taken away CHP's rights to develop the property. This is not intended as a threat and litigation is certainly not a desirable outcome for CHP. However, it is a fact that CHP would have no other alternative because of the substantial harm that would be caused. CHP would be stuck with a site that it could not develop and, consequently, it would suffer substantial financial losses. The cause of those losses would be solely attributable to the City and litigation would be CHP's only means of recovering any of those losses.

The following are a few excerpts from and references to opinions from court cases about similar matters, which are intended to be illustrative with respect to regulatory takings:

When a city denied a demolition permit of a property within a historical district, the court stated that a landowner could not be obligated, absent condemnation, to expend its money for the benefit of the public or alternatively to forgo use of the land for the foreseeable future. There are limits to the extent to which an owner may be compelled to bear such costs.

Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.

Mayor, City Manager, City Counselor, City Clerk, and Council Members

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A court required a demolition permit to be issued where a city offered no evidence of economically feasible alternatives to demolition and redevelopment of a site. It stated that "If the public weal demands preservation because of architectural significance irrespective of cost the power of eminent domain is available."

A court asked the following question: What do we have in the case before us where title remains in private hands and where the government regulation which severely restricts the use to which the property may be put is neither in pursuance of a general zoning plan, nor invoked to curtail noxious use? The answer is a regulatory taking. A city would not permit the demolition of an old house. The court stated that the house has been added to the resources of the city by the ordinance (it being argued that the house, as a tourist attraction would benefit the city) where the owner is deprived of the reasonable use of its land. Where the city is attempting to force the owner to retain its property as is, without any sort of relief or adequate compensation, it is nothing short of a naked taking. Legitimate zoning stops far short of this because it does not appropriate to public use. Where the owner can make a case for demolition the city would have to provide agreeable alternatives or condemn the property.

Finally, there is no need for the Moratorium in order to determine whether there are legitimate alternatives available that would preserve the structure on the Neidermeyer Site. The current demolition permit has been or will be denied and a permit cannot be obtained until the existing tenants have vacated the building. There are leases in place through July. As such, there is ample time to identify and evaluate any such alternatives.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or if you want to discuss this in more detail. As always, we appreciate your service to the community.

Sincerely,

Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.

By:


Robert N. Hollis

RNH/jac