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May 5, 2010

Via First Class Mail

Ms. Jill Thatcher
City of Ann Arbor
Planning Department
100 N. Fifth Street
Ann Arbor, Michigan 48104

Re: Comments on the Preliminary Report of the Proposed Fourth and Fifth Avenue Historic District Study

Dear Ms. Thatcher:

This letter is submitted on behalf of the Fifth Avenue Limited Partnership to highlight the deficiencies of the Preliminary Report, Proposed Fourth and Fifth Avenue Historic District Study, dated February 16, 2010 ("Report") prepared by the Study Committee regarding the proposed historic district. In summary the Report fails to provide a legitimate basis on which to establish a historic district for three general reasons:

- (1) There is no credible justification of the suggested boundary.
- (2) There is no analysis of the many prior studies of resources that are located in the proposed historic district. Those prior studies rejected historic designation of resources in the study area, and the Report provides no explanation of what has changed so as to determine the study area as historic.
- (3) The Report lacks a credible analysis and evidence of the required evaluation criteria to establish a historic district.

These failings highlight the one clear conclusion that can be made: the Report is designed to impose Historic District Commission review over all work, including construction, addition, alternation, repair, moving, excavation or demolition, on the real property in the proposed historic district. This includes the Heritage Row properties. The proposed historic district is designed to prevent the Heritage Row project, not to preserve any historic quality of the structures in the proposed historic study area.

Ann Arbor City Ordinance, Ord. No. 4-07, Sec. 3, 3-19-07, Ch. 103, Sec. 8:405 *et. seq.* requires that the Study Committee prepare the Report which shall address, at a minimum, the following:

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- (1) To determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In this regard, the Report must follow the Secretary of Interior standards set forth in 36 CFR part 60 and any other criteria established by the State Historic Preservation Office ("SHPO").¹ Sec. 8:408.
- (2) "The historic district or districts studied;" and
- (3) "The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria."

It should be first noted that the proposed historic district extends into areas that were not authorized by the Ann Arbor City Council in its resolution dated August 17, 2009 charging the Study Committee with the task of producing the Report. The boundary recommended impermissibly extends to include properties on Packard Street. Without such authority, the Report does not comport with the legal requirements and cannot serve as a basis to adopt a historic district ordinance.

The Report failed to determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total.

The Report does not determine the total number of resources in the proposed historic district. A resource is a publicly or privately owned historic or non-historic building, structure, sites, objects, features, or open spaces located within a historic district. Sec. 8:407. No where in the Report is there such an inventory. The Report identifies, apparently, all 47 buildings in the proposed historic district, but does not identify all resources as required by ordinance and statute. The Report also apparently identifies non-buildings as historic resources, acknowledging that such items are resources, but, again, fails to identify all resources. Consequently, it is impossible for the report to comply with the percentage of historic resources. Therefore, the Report cannot serve as a basis to establish a historic district.

¹ The Michigan State Historic Preservation Office requires the following:

"The criteria that a historic district study committee must apply when determining the historic significance of historic resources and the boundaries of historic districts are the criteria and considerations developed by the U.S. Secretary of the Interior for the creation of historic districts, as set forth in National Register Bulletin 15: How to Apply the National Register Criteria" ("Bulletin 15")

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The Report failed to address prior "historic district or districts studied."

The Report acknowledges that portions of the study area were part of other "surveys" in the following years 1973, 1975, 1976, 1978, 1982, 1988, and in 1990. In fact, the entire City of Ann Arbor had been exhaustively studied over the years to determine historic resources and proposed historic districts. Beyond the literal one sentence about these prior studies, nothing was addressed, and consequently, the Report fails to meet the legal requirements in this regard. For example, the Individual Historic Properties Historic District Study Committee studied a multitude of properties in the 1994 timeframe for their historic nature. The Report fails to mention or discuss any of these prior studies, the inventory, the analysis, and the conclusions. It is remarkable that with the significant historical study that was conducted, none of the resources mentioned in the Report were determined to be sufficiently historic to warrant the establishment of a historic district. It is also remarkable to note that only ten of the 46 claimed historic resources in the Report were identified in the prior studies as having any historic value. And, interestingly, the ten were identified as having architectural significance, and not having any association with any historically significant event. The obvious question arises of "what has happened since then." The answer, of course, is nothing. Therefore, the result should be the same. There is no justification for a historic district.

The Report fails to address the "significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria."

This is a lengthy aspect of this letter. First, it should be noted that the Report simply summarizes the evaluation criteria but only provides two pages of analysis regarding 46 alleged historic resources to demonstrate compliance with the referenced criteria – an incredibly weak and short analysis which is reflective of the lack of evidentiary support for a historic district.

There is no principled basis for the suggested boundary

The boundary justification in the Report has no cohesive rationale which, upon closer examination, is logical because there is no historical significance to this area and the structures. Even the fact that the buildings are relatively old is not particularly significant because so are many, many others in Ann Arbor. Even the fact that the buildings can be described architecturally as having a certain style (e.g. Queen Anne) is not significant because there are hundreds of such similarly aged homes and of a similar style in Ann Arbor.

Historic districts are typically a concentrated area of contiguous resources. Historic district boundaries should be based on three factors: (1) historic significance,

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(2) physical integrity of the resources, and/or (3) the location of significant geographic features. While boundaries based on integrity and geography are determined by observation, boundaries based on historic significance are identified on the basis of research. The boundaries for this proposed historic district do not follow the standards because buildings located on immediately adjacent streets were also built during the same time period and in the same varied architectural styles found in the proposed historic district. The buildings located in the proposed district cannot be distinguished from the surrounding properties and the proposed boundaries are, thus, completely arbitrary. The Report also fails to reflect the fact that large areas in the proposed historic district are asphalt parking lots. (This is reflective of the Report failing to identify all resources in the proposed historic district). The fact that the district boundaries were defined by the Ann Arbor City Council in its resolution dated August 17, 2009 is not justification for the boundaries. The Report must justify each individual directional boundary of the proposed district according to the guidelines developed by the U.S. Secretary of the Interior. The boundary justifications should include a concise explanation of why the boundaries were chosen based on geography, integrity and/or significance, and address any irregularities in the boundaries and why they are there. The Report does not.

Moreover, the Report fails to tie any historic event or even theme to the boundaries. It references three "themes" as being "Yankee settlement," "German settlement," and "University of Michigan settlement," but these are not historically significant events, individually, and the Report is devoid of any significance of the interrelationship of the three to justify a period of significance as spanning 1838 to 1941. Interestingly, why 1941 was picked as the end date is a mystery in light of the fact that the Report states that German immigrant and descendents lived in the area until the 1960s. It uses phrases such as the area to the south are "marked by residential areas illustrating contextual theme separate from those of the proposed district" without explanation. Simply stated, the Report provides no reasons as to why this area as opposed to any other area in Ann Arbor that has similarly aged structures is historic.

The National Register, Bulletin 15: How to Apply the National Register Criteria for the creation of an historic district states:

A district must have a definable geographic area that can be distinguished from surrounding properties by changes such as density, scale, type, age, style of sites, buildings, structures, and objects or by documented differences in patterns of historic development or associations. It is seldom defined, however, by the limits of current parcels of ownership, management or planning boundaries. The boundaries must be based upon a shared relationship among the properties constituting the district.

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The Report also fails to document the three themes referenced property through any accepted means of historical or archeological research, to have existed at the time of the event or pattern of events and to have been associated with those events. Importantly, there is no respected reporting of such themes as being tied to the proposed historic district area. The criteria clearly establish that a building is not historic if its "associations are speculative.

The Report provides some history of the buildings but there is no significant event related in the report, no reference to significant and important historical persons, and limited architectural history. It seems as if the Study Committee looked at the history of the individual buildings and cobbled together three themes to justify a period of significance to make up the entire timeline of construction of the buildings in the proposed historic district.

The Report provides the history of certain persons who lived in the proposed district but does not describe how those persons are historical figures, and how the building contributes to the narrative for the person or any significant historical event.

For a property to qualify as being historic, it must meet the following criteria from the National Register Criteria for Evaluation:

- (1) Being associated with an important historic context; and
- (2) Retaining historic integrity of those features necessary to convey its significance.

The Study Committee is required to assess the following to determine historic integrity:

- (a) Define the essential physical features that must be present for a property to represent its significance.
- (b) Determine whether the essential physical features are visible enough to convey their significance.
- (c) Determine whether the property needs to be compared with similar properties. and,
- (d) Determine, based on the significance and essential physical features, which aspects of integrity are particularly vital to the property being nominated and if they are present.

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And, historic resource must have at least one of the following criteria to be significant, but none of these criteria are explained in the Report:

- (1) Criterion A: that are associated with events that have made a significant contribution to the broad patterns of our history

The Report does not identify any specific events that have any historic significance other than that they occurred. The report speaks to the early settlement by American Yankees, residency by ethnic Germans and then residency by persons who studied or worked at the University of Michigan.

The Report also references the immigration of ethnic Germans but acknowledges that the most significant German immigrant settlement was actually in the Old West side. There is no explanation as to why German residents in the study area is significant. The report only makes assertions of fact with no references or evidence to back up the claim that this immigration event is significant to the City of Ann Arbor history.

- (2) Criterion B: that are associated with the lives of persons significant in our past.

The Report claims that there were three homes that were the residences of three mayors and a superintendent of Ann Arbor Public schools. But, there is no explanation as to why those persons were significant other than the statements of the offices held; what they accomplished; why they are historically significant, and, most importantly, why and how the structures are connected to such history.

According to Bulletin 15 section VI,

The persons associated with the property must be individually significant within a historic context. A property is not eligible if its only justification for significance is that it was owned or used by a person who is a member of an identifiable profession, class, or social or ethnic group. It must be shown that the person gained importance within his or her profession or group.

Eligible

The residence of a doctor, a mayor, or a merchant is eligible under Criterion B if the person was significant in the field of medicine, politics, or commerce, respectively.

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Not Eligible

A property is not eligible under Criterion B if it is associated with an individual about whom no scholarly judgment can be made because either research has not revealed specific information about the person*s activities and their impact, or there is insufficient perspective to determine whether those activities or contributions were historically important.

The Report fails to provide any historically significance references specific to the accomplishments of the persons identified in as homeowners or residences of the buildings.

- (3) Criterion C: that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction

Nothing the Report suggests the work of a master or high artistic value of a vast majority of the structures in the district. In fact, the Report only provides evidence that only one house was actually designed by an architect the house at 438 South Fifth designed by Herman Pipp (of an Arts & Crafts design).² While alluded to in the Report, there is no evidence that Henry Richardson had any involvement in the Bethlehem Church (or any other buildings in the proposed historic district), and there is no explanation of how Richard Rasemann (the architect for the Bethlehem Church) was patterned after any Richardson design. These are statements made in the Report adjacent to each other to given the impression that there is some relationship, but there is not detailed in the Report. Similarly, there is no evidence provided of any connection between the Rail Depot and the Bethlehem Church design.

² Moreover, simply because a building was designed by a noted architect does not mean it is historic. "The property must express a particular phase in the development of the master's career, an aspect of his or her work, or a particular idea or theme in his or her craft. A property is not eligible as the work of a master, however, simply because it was designed by a prominent architect. For example, not every building designed by Frank Lloyd Wright is eligible under this portion of Criterion C, although It might meet other portions of the Criterion, for instance as a representative of the Prairie style." Bulletin 15.

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The Report covers at length the styles of the houses but provides no connection between the housing styles and any sense of history. For example there is no connection between Greek Revival, Queen Anne, Italianate, or Colonial Revival design and why that may have been important to German immigrants. The Report fails to establish how the design and construction of each building is significant.

The Report tries to make a connection between nearby lumber mills and the construction of the various architectural style, but there is no evidence provided that any of the materials used for the buildings came from the Kerrytown lumber mills. Additionally, there is no credible reporting that the buildings are substantially similar to their original appearance.³

The Study Committee prepare survey sheets for each building which listed the style of the house and the materials of the foundation, walls and roof, but there is no analysis as to why such features are historically significant. The Report does not explain whether any of the materials are original or important, or not. Street level inspection reveals that many buildings have been altered and have vinyl or aluminum siding, non-original windows, back staircases, and other non-original features. In this regard, Bulletin 15 states.

Properties eligible must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction.

³ According to Bulletin 15, sec. VIII

A property important for illustrating a particular architectural style or construction technique must retain most of the physical features that constitute that style or technique. A property that has lost some historic materials or details can be eligible if it retains the majority of the features that illustrate its style. In terms of the massing, spatial relationships, proportion, pattern of windows and doors, texture of materials, and ornamentation. The property is not eligible, however, if it retains some basic features conveying massing but has lost the majority of the features that once characterized its style.

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If the historic exterior building material is covered by non-historic material (such as modern siding), the property can still be eligible if the significant form, features, and detailing are not obscured.

There is no principled way gleaned from the Report to determine why all buildings were determined to be historic which begs the question of what would it take for the Study Committee to determine that a building was not historic? The Report does not provide any reasons why most of the houses are historic other than its basic style and its age. Bulletin 15 also provides that the Report must define essential features that must be present for the property to be considered historic. There is no explanation of why claimed features are historic. For example, there is no explanation of why a chicken wire fence is significant to German immigrants. Was chicken wire (apparently a historic feature), a symbol or especially important to such residents? Or was it run of the mill that is just old.

This is especially the case where the house have been modified from single family occupancy to multiple family rental units. This also raises the question of whether the Report truly asserts that the rental units on Fourth and Fifth Avenue are historic. Many of the structures have been modified to include front porches, back stair cases and the like. The Report disregards the impacts of these which generally are disqualifying features. See Bulletin 15, which states as follows:

If a property's exterior is covered by a non-historic false-front or curtain wall, the property will not qualify under Criteria A, B, or C, because it does not retain the visual quality necessary to convey historic or architectural significance. Such a property also cannot be considered a contributing element in a historic district, because it does not add to the district's sense of time and place. If the false front, curtain wall, or non-historic siding is removed and the original building materials are intact, then the property's integrity can be re-evaluated.

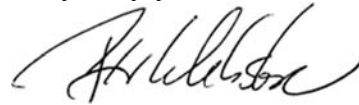
Lastly, the methodology of the Study Committee must be questioned and investigated. During its review, the Study Committee used panoramic maps of Ann Arbor to somehow verify the age of homes, determine if there were any changes to the homes or structures over the years, and to verify the historic integrity. The Report fails to provide any authenticity or accuracy of such maps. There is no evidence to suggest that they are accurate for the purposes used. Additionally, the Study Committee did not undertake a photographic array study of the structures. That is, they did not document historical (i.e. old) photos of the structures against the new photographic inventory. Further, the commentary at Study Committee meetings was replete with admission that

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much of the information was guess-work and speculation. Examples of improper and unsupported conclusions can be seen in the Report itself (e.g. the conclusion that Uri Bassett **probably** built the house located at 450 South Fifth Avenue). This did not occur because it is likely that such photos do not exist. This, further, is evidence that the structures are not historic – they were not significant enough to document them in any pictorial history or remembrance.

Also, while the Study Committee meetings were open to the public, the Study Committee failed to keep meeting minutes of its meetings, failed to make a record of its decision making, including a record of the reasons why a district should not be established. And, while not required, it certainly could have sought input from the property owners in the proposed historic district. In light of the fact that a majority of the property owners as depicted on the property tax rolls oppose the establishment of a historic district, the Study Committee would have been well served by an effort to include them in the process beyond the minimum mandatory requirements which is limited to the public hearing which is being held tonight. In that regard, I ask that this letter be included in the hearing record. Thank you for your kind attention to this matter.

Very truly yours,



Peter H. Webster

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