

February 6, 2011

City of Ann Arbor  
100 N. Fifth Ave.  
Ann Arbor, MI 48104

Mayor and Council:

Just a few short weeks ago, you were asked to set aside multiple Council rules in order to reconsider Heritage Row for the second time, six months after the original Council consideration. Wisely, a sufficient number of you voted to stop this unprecedented set-aside of Council rules, local ordinances, and even State law. Now, in a time of severe budget shortfalls, you are being asked to waive all fees so that the same Heritage Row, the one that has been rejected three times already, can now be submitted as a “new” project, free of charge. What a colossal waste of City resources! Clearly this resolution, in the interest of fairness, equitable treatment, and fiscal responsibility, must be rejected.

State law<sup>1</sup> and local ordinances<sup>2</sup> are both very clear that the process for approving a PUD requires a review and recommendation by the planning commission, followed by a public hearing, and then, within a *reasonable amount of time*, FINAL CONSIDERATION by City Council. In the case of Heritage Row, what should have been your final consideration of the proposal took place on June 21, 2010, when it was defeated 7-4, with 8 votes required for approval. Setting aside several Council rules, you reconsidered the matter at the following meeting, and again, the proposal was defeated. In keeping with State law a report should have been prepared by the City “...stating its conclusions, its decision, [and] the basis for its decision...”<sup>1</sup> on the PUD proposal. To my knowledge, no such report was generated (nor was one generated for the City Place PUD, rejected unanimously in January 2009).

Yet, some on Council were *still* not finished helping this developer to extra bites at the apple. Six months after the first reconsideration, far beyond a reasonable amount of time since the public hearing, a *second* reconsideration was proposed that would have required even *more* Council rules to be set aside. In this instance, there were minor modifications proposed (included in your packets at the time), but apparently not enough for the City to interpret Heritage Row as a “new” project that needed to be remanded. Fortunately, enough of you saw the inherent risk in this far-fetched maneuver and refused to reconsider, especially given the token changes proposed to the project.

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<sup>1</sup> MZEA, 2006, Sec. 503:

(6) Within a reasonable time following the public hearing, the body or official responsible for approving planned unit developments shall meet for **final consideration** of the request and deny, approve, or approve with conditions the request. **The body or official shall prepare a report stating its conclusions, its decision, the basis for its decision, and any conditions imposed on an affirmative decision.**

<sup>2</sup> City of Ann Arbor Code, Chapter 55, Article VI, 5:80.5:

(d) The commission shall recommend to City Council action as it deems proper and shall transmit its recommendation together with any recommended conditions of approval and all related reports and minutes to City Council.

(e) Before taking **final action** on the petition, the City Council shall hold a public hearing with notification as required by this Chapter for zoning ordinance amendments.

Cc: Susan Morrison  
File

Now, the City's interpretation of whether or not the slightly modified Heritage Row is the same project or a new project has apparently changed again. The same two council members that brought you the second reconsideration (on the basis that it was the same project, just slightly modified) are now asking you to treat the same Heritage Row as a *new* project that will be started through the process from the beginning. Not only that, but after tens of thousands of dollars in staff and other resources have been spent on this proposal, you are being asked to waive all fees so that we can all go through it yet again.

But will the City really treat this as a new project? Will Heritage Row *Revisited* actually receive the same rigorous and comprehensive review that any other new PUD petition would receive? The resolution explicitly says NO, it will not. This time, Heritage Row is to only receive the most minimal of reviews by staff in order to justify the waiving of all fees and to speed it through the process (which will invariably lead to the same conclusion as the last three times). So which is it--the same or new? Which interpretation will the neighbors be expected to follow? Will we be told that it is now a new project that requires a new protest petition, or the same project, which will not require a new petition? Is this fair and equal treatment of everyone? Will future developers who waste everyone's time with inappropriate proposals be granted free re-submittals, too?

Mr. de Parry has had two years to come up with a proposal that increased the return on his property (if that is even necessary), but also maintained the look and feel of this neighborhood that all our master plans and studies have called for protecting. He has had two years to come up with a proposal that does not have detrimental effects on surrounding properties (like crowding them or shadowing them from sunlight). It might be one thing to waive all fees for a developer who presents a real compromise, a real respect for Ann Arbor's master plans, and a real benefit to the community, but this is essentially the same Heritage Row that has been rejected three times already. Let's stop this merry-go-round.

The de Parry's have threatened multiple times to build City Place, but each time have come back looking for another shot at a PUD. Each time, Council has chosen to at least entertain the idea, it has caused uproar and undue stress in the community, and further empowered the de Parry's to refuse to compromise. Until they see that Council has resolved to end this dispute in favor of the community, and uphold the high standards for PUD approval, I don't believe the de Parry's will ever sufficiently compromise. I have no fear of City Place, but if you do, you have the power to stop it in any number of legal ways. Ways that have far more legitimacy than recent Council maneuvers in favor of the developer.

Should you choose to waive fees for Heritage Row, I urge you to require two things in return: 1. All property taxes for the subject properties, currently in arrears, should be brought up-to-date, and remain up-to-date throughout the process (See City and County tax records for 415 S. Fifth Ave.), and, 2. The proposal should receive the same full and comprehensive review afforded all new projects (setting aside all previous analysis).

Thank you.

Tom Whitaker  
444 S. Fifth Ave.