

February 28, 2013

Stephen K. Postema and Kevin McDonald
City Attorney – City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104

Re: 413 East Huron Street, Ann Arbor, Michigan (the “Project”)

Gentlemen:

As you are aware, our firm and Susan Friedlaender of Friedlaender Rogowski, PLC serve as co-counsel to the developers of the above-referenced project. As was expressed at the City Council meeting held on February 19, 2013, and as more thoroughly set forth herein, our client objects to the proposed moratorium and we urge you to deny the motion. Ms. Friedlander will also be providing a separate letter that reiterates certain positions set forth herein and identifies and elaborates on additional issues and concerns.

Initially, it is clear to our client (and also to the City, project opponents and the media for that matter) that the Project has been subjected to more intense scrutiny when compared to other “by-right” projects. We have been particularly disappointed in the intensity of the scrutiny and the tone of the process when there is no dispute that – the Project is expressly permitted in the D-1 zone, it complies with every element of the ordinance, the developer has patiently and methodically shepherded the Project through the process, it has been enhanced beyond ordinance requirements in response to community input and it has been recommended for approval by the Planning Department and other reviewing bodies. We would better understand this degree of scrutiny if it were a PUD project, special exception use or other project that is subject to more discretionary and subjective criteria. It is discouraging that in this case, in the jurisdiction from which the landmark *Hessee Realty v Ann Arbor* case emerged, there would be such intensity related to a by right project that satisfies all of the required standards. As has been pointed out at City meetings, it appears that a small number of influential project opponents and community leaders have driven this approach and tone. We caution the City against the dangers of allowing a small number of outspoken opponents to influence the approval process.

Even within this challenging environment, the Project succeeded in receiving a majority vote of the Planning Commission to recommend approval of the Project. Unfortunately, the vote was one vote short of the “super-majority” required for this type of project and therefore was technically “not recommended” for approval. As disclosed by video of the Planning Commission meeting - we question whether the process may have been tainted by lengthy discussion and opinions that focused on the aesthetics, design, massing and/or size of the Project rather than ordinance criteria. We note that at least two Planning Commissioners used aesthetic factors as a basis for their “no” votes. As has been discussed, aesthetics do not serve as an

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appropriate reason to deny recommendation of a “by-right” project and our client may invoke their legal protections if they are used to do so.

As the process moved forward, our client was troubled to witness the comments of self-righteous Project opponents snowball into a movement to actually change the ordinance - purportedly to compel our client to change their design and “protect” the City from their opinion of bad development. As has been discussed, we are all well-aware that a City cannot legislate aesthetics, architecture, art or other expression. Nonetheless, these efforts and opinions at the Planning Commission meeting, have apparently set in motion the process that has led to the proposed moratorium and threaten the progress of our client’s by-right Project.

As troubling as the moratorium itself, are the apparent lengths that have been taken to specifically target this individual Project. We note that the City appeared to scramble to rush a motion for the moratorium onto its February 19 agenda. It appears that neighbors, project opponents and even the media were made aware of the moratorium movement – but no notice or other advance indication was provided to our client – even though they had the most at risk and it was well known that they would have to travel from distant parts of the country to address the motion. The multiple versions of the proposed resolution also suggest the moratorium is targeted at our client’s project. We note that the progressive development of resolutions narrow its impact and appear to go to lengths to exclude more favored projects while continuing to clearly encompass the Project. As expressed at the meeting, if that is not the intent, why not remove the contortions and simply exempt all pending applications? The circumstances raise appropriate process questions that our client would be compelled to investigate if the moratorium is imposed.

As the City is also aware, our client relied on the D-1 zoning category when it made its investment in Ann Arbor and committed to move forward with the Project. The City zoned the property D-1 just a few years ago in 2009 as a product of the lengthy and thorough A2D2 process. The movement to discard the zoning that resulted from such a lengthy and thorough process in reaction to one unpopular project would be improper and would undermine the City’s credibility. In essence, the process could be viewed as luring developers to the market, only to deprive them of the project that they had every reason to believe they could build. The long term threat to the City and its markets of reactionary and targeted political and legislative activism is well-stated in a portion of the “Takeway” section of the 2012 Connecting Williams Street Market Study which was circulated at the Council meeting and is enclosed for your review.

At the end of the day, there is no dispute that the Project satisfies the requirements of the ordinance, has been recommended for approval by the City Planning staff and has received a majority vote in favor of the project from the Planning Commission. The developer has accommodated the City and the Project’s neighbors in numerous ways which are detailed in the application. They have patiently, professionally and methodically complied with every step in a very lengthy process and should have the right to build the Project as expressly permitted by the City’s ordinance. In light of all of these factors, actions and efforts, we urge the City to deny the

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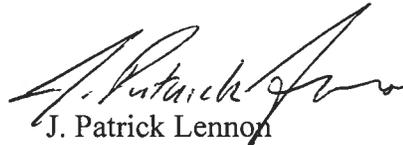
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Motion for a Moratorium at its next meeting, to comply with their ordinance and approve the Project at its meeting on March 18.

As always, thank you for your time and attention to these thoughts and positions. We felt it necessary to provide these to you prior to the upcoming meeting and hope you will include them in the package circulated to the City Council. We look forward to continuing this conversation at the City Council meeting on March 4. In the meantime, if you have any questions, please do not hesitate to contact any of us.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



J. Patrick Lennon

cc: Susan K. Friedlaender
Wendy Rampson
Alexis Dileo
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Takeaway

While interview comments were wide ranging, based on the diversity persons interviewed, there were a number of common concerns which emerged during the interviews. Chief among these concerns was the perception that local elected officials have undermined the development/redevelopment process in the CBD area over the past five years and that, as a result, developers have become wary of pursuing projects in the CBD area.

Whether the above concern is valid or not, the mere perception that pursuing development and/or redevelopment within the City of Ann Arbor is considered challenged, politically, can serve a significant deterrent to attracting the most capable and well financed developer talent to the CBD area. Further, once such as reputation becomes widespread, counteracting through political and policy changes can take years – an outcome which the City should seek to avoid.

Another frequently expressed refrain was that there was too little supply of quality office space in the CBD, to accommodate the growth needs of area technology companies. Interviewees raising this issue expressed concern that without an increase in more space suitable for locally established tech companies, Ann Arbor runs the risk of seeing such companies leave the area in search of such space.