

MICHAEL BEST

& FRIEDRICH LLP

**Michael Best & Friedrich LLP
Attorneys at Law**

One South Pinckney Street
Suite 700
Madison, WI 53703

P.O. Box 1806
Madison, WI 53701-1806

Phone 608.257.3501
Fax 608.283.2275

William F. White

Direct 608.283.2246
Email wfwhite@michaelbest.com

March 29, 2012

Mayor Paul Soglin, Chair
City of Madison Board of Estimates
210 Martin Luther King Jr Blvd, Room 406
Madison, WI 53701

Dear Mayor Soglin and Members of the Board of Estimates:

This letter is sent to call your attention to some of the critical differences between the proposal submitted to purchase the Collins House from the City of Madison by our client, Barbara Fant, and her daughter and son-in-law, Delia and Mark Gallo, (the "Fant Proposal") and the proposal submitted by Bob Klebba and David Waugh (the "K/W Proposal").¹

First and foremost, the Fant Proposal offers cash for the Collins House at the appraised value of \$185,000 which is \$55,000 more than the K/W Proposal. The Fant Proposal also offers the much-needed stability that a single family home provides and the 99-year land lease deserves. The Fant Proposal also requires no change in zoning and offers \$1330 more than the K/W Proposal for the first year's ground rent, with an escalator clause. Finally, the Fant Proposal's financing to purchase and restore the property does not require the sale of other property and requests no funding from the City.

The online chart entitled "9470 - James Madison Park Proposals Review (704 East Gorham Street)" incorrectly asserted that the K/W Proposal "is the only one with a ground rent escalator." The Fant Proposal states that its land lease payment would follow the City Assessor's annual valuation of the land and the improvements on it. Thus, the ground rent would increase with the value of the land. Dan Rolfs, Office of Real Estate Services, Department of Planning and Community and Economic Development, who served as staff for the James Madison Surplus Property Disposal ("JMSPD") Committee and created the aforementioned online chart, corrected this fact at the JMSPD Committee meeting on December 15.

The K/W Proposal for establishing a Bed and Breakfast should be secondary to the Fant Proposal for several reasons. First, the K/W Proposal is contingent on the sale of a primary residence and is illegal as it is prohibited by MGO §28.08(6)(b)5.d. because the Livingston Inn is already operating within 500 feet of the Collins House.

¹ The K/W Proposal and the Fant Proposal and supporting documents are available online at <http://legistar.cityofmadison.com/detailreport/?key=26979>

Board of Estimates
March 29, 2012
Page 2

Second, Matt Tucker, Zoning Administrator, clearly stated at the Parks Commission meeting on March 14, that even if the Common Council amends the zoning code for the benefit of K/W, their "Chef's Night Out" dinners--an important component of their proposed public access--will be illegal due to the zoning restrictions for B&B operations.

Third, the K/W Proposal never presented a business plan to be viewed or vetted according to recent industry data. The K/W Proposal's speculative goals for B&B occupancy rates and income would be very difficult, if not impossible, to achieve.² While the Pratzells successfully operated a B&B at the Collins House from the mid-1980s until 2005, their success was in part due to a catering operation that produced \$75,000 in income per year, something the K/W proposal does not include.³

Fourth, the K/W Proposal has been extensively changed many times since the final submission deadline on November 7, 2011, while the Fant Proposal remains the same today as it was on November 7. The K/W Proposal originally stated that:

The property appeals strongly to us as a B&B ... However, under the current R-5 zoning, it is not permissible to operate the Collins House as a B&B within 500 feet of the existing Livingston Inn at 752 E Gorham St. In the meantime, we propose to occupy the Collins house as our primary residence and rent out 4 of the 5 bedrooms. The B&B configuration has already divided the house efficiently and zoning allows use as a "lodging house" The property is located in a very desirable rental property area. We thus expect no difficulty in finding good renters.

Subsequently, at the JMSPD committee meeting on November 30 and during their presentation for the Committee on December 15, K/W instead proposed to immediately open and operate a 4-room Bed and Breakfast establishment. After Mr. Tucker testified at the conclusion of the December 15 meeting that a Bed and Breakfast was not permissible by city ordinance, K/W submitted a document on December 17 (after scoring by the JMSPD Committee had begun) which stated that they would instead "pursue a 5-room "Bed and Breakfast" under the transient-guest lodging house use our separate dwelling unit will be established in the lower level." At

² The biannual *Industry Study of Innkeeping Operations and Finance* released by the Professional Association of Innkeepers International (PAII) shows that the median occupancy for B&Bs held steady at 44% in 2008, after results of 44% in 2007, 38% in 2006 and 35% in 2005.

³ See p. 29 of the 2005 appraisal of the Collins House commissioned by the city of Madison and performed by D.L. Evans Company, Inc. Available online at [http://www.cityofmadison.com/planning/pdf/JMP Appraisal Collins House.pdf](http://www.cityofmadison.com/planning/pdf/JMP%20Appraisal%20Collins%20House.pdf).

MICHAEL BEST

& FRIEDRICH LLP

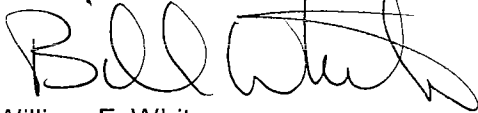
Board of Estimates
March 29, 2012
Page 3

the meeting on January 5, when the JMSPD Committee voted 4-2 to recommend the K/W proposal despite five of the seven JMSPD Committee members scoring the Fant proposal higher, no mention was ever made of a "transient-guest lodging house." As you can imagine, we are all very interested to learn which version of the K/W Proposal will be presented to the Board of Estimates and the Common Council. Bottom line is that this process has been extremely unfair and arbitrary.

If you objectively review the two proposals before you, we are confident that you will agree that the Fant Proposal offers more money, more clarity, greater merits, and much stronger financials than the K/W Proposal. As the Parks Commission concluded by a 5-2 vote on March 14, the Fant Proposal is in the best interest of the City of Madison. Thank you in advance for your careful attention to this important matter. I am enclosing my letter to the Common Council dated January 13, 2012 which contains additional information for your consideration. Please let me know if you have any questions and we look forward to seeing you Monday. My number is 695-4946.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP



William F. White

Enclosure

cc: Cordelia and Mark Gallo
Barbara Fant
Alder Bridget Maniaci, District 2
David Wallner, Chair, JMSPD
Matt Tucker, Zoning Administrator
Dan Rolfs, Community Development Project Manager

030569-0001\11178456.1

MICHAEL BEST

& FRIEDRICH LLP

Michael Best & Friedrich LLP

Attorneys at Law

One South Pinckney Street

Suite 700

Madison, WI 53703

P.O. Box 1806

Madison, WI 53701-1806

Phone 608.257.3501

Fax 608.283.2275

William F. White

Direct 608.283.2246

Email wfwhite@michaelbest.com

VIA HAND DELIVERY, US MAIL AND EMAIL

January 13, 2012

Mayor Paul R. Soglin
Office of the Mayor
210 Martin Luther King Jr Blvd., Room 403
Madison, WI 53703-3345

Alder Lauren Cnare, President
City of Madison Common Council
210 Martin Luther King, Jr. Blvd, Room 417
Madison, WI 53703

Dear Mayor Soglin, President Cnare and Members of the Common Council:

This letter is sent on behalf of Barbara G. Fant, the proposed purchaser ranked highest for the City's surplus property known as The Collins House, a City landmark on the National Register of Historic Places at 704 East Gorham Street. After a lengthy process, the Fant proposal received a substantially higher score from members of the James Madison Park Surplus Property Disposal Committee (the "Committee"), based on criteria set forth in its Reissued Request for Proposals (RFP) on September 20, 2011. None-the-less, at its public meeting on Thursday, January 5, 2012, the Committee voted 4-2 in favor of another proposal. The two dissenting votes, that is, those in favor of the Fant proposal, were cast by alders, including the alder in whose district Collins House is located.

The successful bidder, Klebbe/Waugh (KW), whose proposal was ranked second, will come before the Common Council on January 17, 2012, for referral to the Parks Commission, Landmarks Commission, Plan Commission and Board of Estimates. Ms. Fant would request that this matter be remanded back to the James Madison Park Surplus Property Disposal Committee.

Initially, we note that Ms. Fant has proposed that the Collins House return to its "highest and best use," that is, to single family owner-occupancy. Her daughter and son-in-law, Cordelia and Mark Gallo, moved to Madison last year for the purpose of raising their children. Ms. Fant and her daughter, a ten-year resident of Madison before she married, previously owned and rehabilitated a house at 1517 Morrison Street. They now propose to buy the Collins House and restore it to museum-quality, U. S. Secretary of the Interior standards as the Gallo family's primary residence, with Ms. Fant residing there intermittently.

Cordelia and Mark Gallo and their children would not only live in the Collins House, they also intend to operate a "Farm to Fork" catering business by reinstating a commercial kitchen installed in the basement. Matthew Tucker, Zoning Administrator, has issued a written opinion that this would require a conditional use permit but not a change in the zoning classification or

MICHAEL BEST

& FRIEDRICH LLP

Mayor Paul R. Soglin
Alder Lauren Cnare, President
Page 2

ordinance. The Gallo family would also make the Collins House available for civic and neighborhood events, tours, meetings and receptions.

Ms. Fant, with a Ph.D. in American Material Culture, has thirty years' award-winning experience in restoring, preserving and protecting under easement several historic properties in other states, in addition to rehabilitating her daughter's former home on Morrison Street in the City of Madison, 2002-2004. She requests that this matter be referred back to the Committee for the following reasons:

The K/W proposal is illegal. The City's Reissued Request for Proposals (RFP) required final proposals to be submitted to Committee staff by November 7, 2011. The K/W proposal is for a bed and breakfast that would allow the proposers to live in the house. However, the Madison General Ordinances prohibit a bed and breakfast within 500 feet of another in the HIST-L and R-5 zoning district. The Livingston Inn (a/k/a the landmark Leitch House) at 752 East Gorham Street is less than 500 feet away and thus renders the K/W proposal illegal under MGO §28.08(6)(b)5.d.

Notwithstanding the Committee's RFP requirement that a final proposal be submitted on November 7, the K/W proposal was amended several times, most recently in late December to provide that the Collins House become a lodging house instead of a bed and breakfast. This change in use creates additional problems in that the proposers may not live in the lodging house as they envision. The statement that the basement is a living unit is incredible, because the basement is not a "living unit" with a certificate of occupancy. The proper methodology would have been to try to amend the zoning ordinance before submitting a B&B proposal, as opposed to asking the Committee to accept a proposal that is illegal on its face. What is now before the Common Council is an illegal proposal.

The Committee also apparently allowed substantial modifications to the K/W proposal as late as the meeting on January 5, 2012, when K/W again changed their proposal to increase the base ground rent by over fifty percent. No copy of this amended proposal was provided to the other applicants, and it should have been rejected out of hand.

Richard Linster, president of the Tenney-Lapham Neighborhood Association, speaking only for himself, supported the Fant proposal: "I believe that a core of families can effect a profound beneficial change in this part of the neighborhood and make it a truly desired residential distinction . . . This is simply too good a proposal to pass up."

Committee staff has proposed a period of 180 days following the Common Council's scheduled action on February 28, 2012, before settlement. This is a much longer delay than any proposer requested. (K/W indicated their contingencies, including the necessary sale of their current residence, could be met by May 2012.) This prolonged period possibly takes the Collins House into another winter cycle, if the K/W contingencies are not satisfied. Currently there is damage to the Collins House from having been vacant for six years since 2005, which further delay will

MICHAEL BEST

& FRIEDRICH LLP

Mayor Paul R. Soglin
Alder Lauren Cnare, President
Page 3

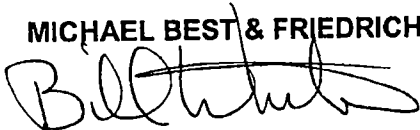
only exacerbate. For example, the flashing on the roof needs to be replaced to prevent additional water damage to the dining room.

It is unfortunate that Ms. Fant has felt it necessary to ask that this matter be referred back to the James Madison Park Surplus Property Disposal Committee. Yet it should be apparent to anyone, not only to a dedicated historic preservationist, that the landmark Collins House and the City of Madison deserve an RFP both fair and predictable, instead of her meritorious proposal's defeat by an undisciplined process in support of an illegal proposal.

We look forward to working collaboratively with the City to ensure, instead, that the RFP process and the Committee vote regarding disposal of the Collins House are based upon objective standards, fairly judged and designed to maximize its "highest and best use" to the James Madison Park, the Tenney-Lapham neighborhood and the City of Madison.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP



William F. White

cc: Members of the Common Council
James Madison Park Surplus Disposal Property Committee Members
Michael P. May, City Attorney
Barbara G. Fant
Cordelia and Mark Gallo

030569-0001\10829012.1