

March 1, 2023

Board of Park Commissioners
c/o Lisa Laschinger
330 E. Lakeside Street
Madison, WI 53715

Re: The North House at Thorstrand Estate
1908.74483

Dear Commissioners:

We represent the Polly O' Hare Revocable Living Trust dated November 28, 1990 (the "O'Hare Trust"). The O'Hare Trust is the owner of the North House, which is located on the Thorstrand Estate, a landmarked property originally built by Magnus Swenson. We are requesting feedback from the Commission relating to proposed revisions to the Ground Lease Agreement (the "Lease") between the city of Madison and the O'Hare Trust relating to the North House.

MAGNUS SWENSON

Magnus Swenson, along with Charles R. Van Hise, received the first research degrees ever awarded by the University of Wisconsin (Master of Science). Swenson developed revolutionary drinking water tests while at the University of Wisconsin. At that time, the connection of cholera and typhoid to drinking water were far from common knowledge in Madison, and "water purity" tests did not exist. Swenson helped pave the way for safe municipal water supply.

In the early 1900s, became president of the U. S. Sugar Company that established sugar beet refineries in Menomonee Falls, Janesville, Madison, and Chippewa Falls. The Madison plant operated in the building that is now the Garver Feed Mill. Swenson founded the Swenson Evaporation Company in Chicago Heights, was president of the Southern Wisconsin Power Company, served as director of the First National Bank of Madison, and organized the Norwegian American Steamship Line. Swenson chaired the Building Commission for the Wisconsin State Capitol and was appointed to the University of Wisconsin Board of Regents. He served as a member and president of the Board until 1920.

Magnus Swenson died in 1936, but his legacy has endured in Madison and beyond. He is remembered as a successful businessman, a dedicated philanthropist, and a visionary leader who helped to shape the city's growth and development.

THORSTRAND ESTATE AND THE NORTH HOUSE

The O'Hare Trust is the owner of the North House, which was part of the Thorstrand Estate. The city purchased the 15.29-acre portion of the Thorstrand Estate in 1978 and is preserved as a passive recreation area, within the larger Marshall Park. Swenson's ownership of the Thorstrand Estate added to the historical significance of the property, and his contributions to the city of Madison further cemented its

place in its history. The North House is a landmark in the city for its beautiful architecture, rich history, and connection to Swenson.

Swenson's daughter Mary North inherited the portion of the Thorstrand Estate containing the North House and the Swenson House. She died in 1978 and her surviving children, including Polly O'Hare, agreed to sell the lands to the city to preserve it and the estate. The city purchased the portion of the Thorstrand Estate from the Marshall Park boundary south to Thorstrand Road. We believe that the purchase price was approximately \$465,933, which the O'Hare family believes was significantly less than they would have received if they had sold the property for private development. Polly O'Hare agreed to the sale because it was a path to preserve the property and legacy of Magnus Swenson.

The city declared the North House and the Swenson House to be city landmarks on December 17, 1979, and the two houses received state / national designations on August 11, 1980. At some point in 1980, the city "determined it is in the City of Madison's best interest to preserve the improvements located on said Lots 3 [the Swenson House] and 4 [the North House]." It was then able to get the Wisconsin Department of Natural Resources and the Department of the Interior to lift the conservations deed restrictions on the residential lots on December 17, 1980. On January 30, 1981, the city leased back the Lot 4 "ground" to Polly O'Hare. She continued to own the improvements (i.e. the North House) where she maintained a residence until her death.

MAINTENANCE AND PRESERVATION

Polly O'Hare and, subsequently, the O'Hare Trust have invested substantially in the maintenance and preservation of the North House. In August 2012 after consulting with the City of Madison Landmarks Commission and State Preservation Office staff the Trust decided to commission a Historic Structure Report (HSR). The HSR was prepared by a consultant team under the guidance of Preservation Architect Charles J. Quagliana, AIA, NCARB. The team included Douglas Sutter, Senior Construction Manager, and Kurtis Straus, P. E. Structural Engineer.

The scope of the HSR includes both the North House and a detached garage with an apartment. The team did a comprehensive analysis of the structure and condition of these buildings that included opening interior surfaces in the North House to examine the condition of framing and structural elements.

The HSR was completed in the spring of 2013 and provided an assessment of the historic value and integrity of the North House, its current condition, and costs associated with ownership. As noted in the executive summary: "[the North House] remains a jewel of early 20th-century architecture, with fine materials and craftsmanship. Few significant modifications have been made to the interior or exterior, therefore the property exhibits a very high degree of original integrity."

The HSR provides a set of recommendations that address the maintenance, rehabilitation, and preservation of both the North House and the detached garage. These are classified as to urgency or criticality to their restoration, preservation, and maintenance.

Since 2013, the O'Hare Trust's efforts have been focused on the restoration and preservation of the structure and envelope of the two buildings guided by the HSR. The O'Hare Trust has addressed all of the critical issues listed in the HSR as well as select non-critical issues. The O'Hare Trust has spent hundreds of thousands of dollars completing this work.

The interior of the North House has remained in its original form and has been appropriately maintained; however, the bathrooms and kitchen are outdated, and, according to potential buyers, require \$200,000 to \$300,000 in upgrades to meet modern standards of convenience and function.

THE GROUND LEASE AGREEMENT

The current 99-year Lease with the city expires on January 31, 2080. The lease may only be renewed by mutual agreement of the city and the lessee. In other words, the lessee does not have the legal right or option to renew the lease. The Lease encompasses all of lot 4 (32,801 sq. ft. or approximately 0.75 acres). Lease payments are \$429.79 per month. The amount of rent may be changed once every 5 years by the city based on a formula.

MARKETABILITY OF LEASE

The O'Hare Trust is attempting to sell the North House to buyers that will continue its preservation and maintenance. The O'Hare Trust has received much interest, but the conditions of the Lease are a barrier to any sale. The O'Hare Trust has had two credible buyers. The first credible buyer terminated their offer because their lender (Johnson Bank) and the buyers themselves rejected the certain terms including the lack of ability to renew it. The second credible buyers also have issues with the terms of the lease, many of which relate to their inability to obtain financing in the mortgage lending market from a variety of lenders.

Obviously, it is extremely important to the current owner and the buyers that this property be marketable now and, in the future, which includes the ability to obtain financing on the improvements. The property will not be marketable if lenders refuse to lend money to potential buyers. Even if the O'Hare Trust could find a potential buyer that had the ability to pay cash, it is extremely unlikely that such a buyer would purchase the property because its marketability is very limited.

Whether it is the potential buyer needing to obtain financing to purchase the home or the existing owner needing to obtain financing to upgrade the home, the current form of the lease does not meet today's lending requirements relating to ground leases. There are also several provisions that are objectionable to potential buyers in the market. A potential buyer needs to be able to sell the property to a buyer in the future or they will not make the investment.

EXPIRATION OF LEASE VS. TERMINATION

At the expiration of the Lease in 2080, the city would become the owner of the North House; however, if the city terminates the Lease prior to its expiration because the lessee is in default under it for failure to pay rent, etc., then, the city must repurchase the North House at its fair-market value as determined by independent appraisals. The fact that the Lease does not have an option to renew, and the city simply gets the improvements back at its expiration, is a barrier to someone purchasing the North Home. It is also a barrier to someone borrowing money as an owner to preserve and upgrade the house. These provisions create a disincentive for the owner to maintain or preserve the house.

REASONS FOR AMENDING THE LEASE

If the Lease is not amended at some point the city will become the owner of the North House. As a landmark, it is subject to the city's Landmark Ordinance and must be preserved. As a landmark the house requires specialized maintenance and repair to preserve its historical value. If the city acquires the house,

the city will have to allocate the funds to operate, maintain, and preserve the house. This obligation will be expensive.

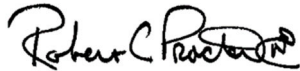
Alternatively, if the Lease is amended to meet the current lending requirements for ground leases, the North House can remain privately owned. The private owner will be required to maintain and preserve the house, at the owner's expense, under the Lease and the Landmarks Ordinance.

REQUEST

The O'Hare Trust is requesting feedback from the Commission as to whether it would be willing to consider revisions to the Lease to make it more consistent with current lending requirements. Such revisions would make this lease more in line with other city ground leases. If the Commission is open to such consideration, we would work with the Parks Department and City Attorney's Office to put together such a proposal for the Commission's further review and consideration.

Sincerely,

AXLEY BRYNELSON, LLP



Robert C. Procter

Cc: Eric Knepp (via email)
Doran Viste (via email)
Chuck O'Hare (via email)
Mary O'Hare-Lewis (via email)
Tony O'Hare (via email)
Daniel T. Hardy (via email)