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March 23, 2009

Mr. Andrew Statz
Office of the Mayor
City of Madison
210 Martin Luther King, Jr. Boulevard, Room 403
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Madison, WI 53703-3342

Michael J. Lawton
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Re: Northeast Neighborhood Sustainability Goals – Goal # 2 – Fossil Fuel Consumption

Dear Mr. Statz:

I have been asked to examine the latest proposal for Goal #2 in the Northeast Neighborhood Sustainability Goals relating to the consumption of natural gas and fossil fuel-generated electricity. According to the latest proposal that I have received from you, dated March 23, 2009, this goal will now read "Reducing household consumption of natural gas and fossil fuel-generated electricity by 25% compared to a baseline reflecting recent residential construction, which will be established and included in the Northeast Neighborhoods Development Plan."

We believe that this goal can only be achieved by the City of Madison mandating certain methods of construction, house design, use of certain appliances or other devices, and other mandates associated with the construction of one-family and two-family residences in the Northeast Neighborhood. In particular, the Northeast Neighborhoods Sustainability Goals document that you provided, dated March 23, refers in various places in the document to the Wisconsin Uniform Dwelling Code (UDC). We believe that the wording of the goal, as revised, can not be achieved without tying the neighborhood plan and its implementing documents to measures which will be in addition to the provisions of the UDC.

Any formulation of a goal which will be implemented by measures which impose requirements which are in addition to the UDC violates in our opinion, the provisions of Sec. Comm. 20.02 (2) (a), Wisconsin Administrative Code, which states that "A municipality may not adopt an ordinance on any subject falling within the scope of this code..." In Sec. Comm. 20.02 (2) (b),

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the Administrative Code provides that this provision does not relate to such matters as land use, zoning, post-construction storm water management, setback requirements, or other similar requirements. However, unlike the storm water or traffic requirements contained in the pending resolution for the Northeast Neighborhood Sustainability Goals, the revised requirement relating to the consumption of natural gas and fossil fuel-generated electricity clearly is tied to, impacts upon, and will impose requirements which are in addition to the UDC. These requirements will be legally invalid.

It will be advisable legally to leave the goal #2 language as it left the Plan Commission and was referred to the Council in its prior version, rather than in the revised version now under consideration. The prior version merely stated the goal as "Reducing household consumption of natural gas and fossil fuel-generated electricity by 25%," and did not tie itself to recent construction under the UDC.

Sincerely yours,

A handwritten signature in black ink, appearing to read "MJL", with a large, sweeping flourish extending upwards and to the right.

Michael J. Lawton

MJL:tept

cc: Mr. Brian Munson

Statz, Andrew 032309 MJL