

May 14, 2010

Dean B Richards
Direct Dial: 262-951-4561
drichard@reinhartlaw.com

Members of the City of Madison Common Council,

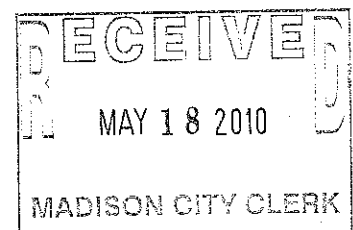
On behalf of the Mansion Hill neighborhood property owners who have appealed the approval of a waterfront development conditional use for the Edgewater Hotel project, I respectfully request that you reverse the decision of the plan commission. In the flurry of activity caused by the hasty consideration of this major project, the plan commission has failed to properly exercise its duties under the MGO. The Common Council must deny this conditional use and return the matter to the plan commission for proper consideration of the standards and conditions required by the MGO.

A valid appeal has been submitted to the Common Council.

Any questions concerning the validity of the appeal filed in this matter should be construed in favor of giving these neighboring land owners an opportunity to be heard on this crucial issue. Disallowing the appeal requires the city to turn a blind eye on clerical miscues and strained readings of the applicable sections of the MGO. Please consider the following factors.

The Petitioners used the publicly posted mailing list.

When the appellants prepared their notice of appeal, they did so using a mailing list, posted on the city's Legistar site, filed within the packet of materials pertaining to the plan commission meeting from which an appeal was taken. A representative of the petitioners then inquired of the city clerk's staff as to whether this was the correct mailing list to use. The staff member advised it was. A timely appeal containing an adequate number of signatures based on that mailing list was then properly presented to the city.



The Petitioners amended their appeal to conform to the city's designated mailing list.

Upon learning that the city attorney's office had opined that the appeal contained an inadequate number of signatures, the petitioners inquired of the city as to the proper mailing list upon which their appeal should have been based. Petitioners were advised that the actual list providing notice of the plan commission meeting was not the list contained in the Legistar file and not the list identified by the city clerk's staff, but rather another list prepared and retained by planning staff. Within ten days of being advised of the city's designation of the "proper mailing list", the petitioners filed an amended appeal containing the requisite number of signatures under the newly identified mailing list. (Copy attached)

The City Attorney improperly counted the number of signatures needed to appeal the conditional use.

The petitioners respectfully disagree with the city attorney's methodology for counting the number of property owner signatures required for a valid appeal. A copy of our correspondence to the city attorney on this issue is attached. The applicable section of the MGO requires that an appeal be signed by "...twenty percent (20%) or more of the property owners notified...". MGO §28.12(11)(i). The ordinance requires a count of property owners, not properties. If a single property owner owns multiple properties, the owner is one "property owner".

The city attorney chooses to interpret the ordinance so as to count each individual property owner for each property they may own. Under this interpretation, an owner of multiple properties is counted once and again for each property owned. This method ignores the plain language of the ordinance and further ignores the fact that other MGO sections use different language to require the counting of properties rather than property owners. For example, MGO §28.12(10)(g)1 requires zoning protest petitions to be signed by "...the owners of twenty percent (20%) or more ..." of the defined lands. That ordinance counts property, not owners. But the conditional use appeal ordinance calls for the counting of individual property owners, without regard

for the number of properties they may own. This ordinance counts owners, not properties.

The tabulation of owners, rather than properties is further supported by the city's practice of sending but one notice to each property owner, irrespective of the number of properties they own. The mailing list record maintained by the planning department includes handwritten strikeouts of multiple mailing labels to a single property owner, even though each label corresponded to a different property.

The city attorney may believe that this tabulation methodology leads to an unintended or absurd result. But this opinion is without consequence. The ordinance is clear and unambiguous. The ordinance contrasts with and can be differentiated from other ordinance language which prescribes a different method of tabulation. The plain language of the ordinance must be respected and given due effect.

The appeal of the conditional use is supported by an adequate number of signatures.

Petitioners are faced with numerous obstacles presented by the city. However, without regard for which mailing list is used to determine the validity of the conditional use, an adequate number of signatures are present on the original appeal, if the notified property owners are properly counted. The city attorney identifies 31 property owners to whom notice was given (See attached tabulation) Of these, two property owners own multiple properties. If property owners are counted rather than properties owned, 26 property owners were notified. Of these 26 owners, six (23%) signed the original, timely-filed appeal. Without regard for which mailing list is used and disregarding the filing of an amended appeal, the proper number of signatures appears on the original appeal if the number of property owners is properly counted.

The Plan Commission failed to find the existence of conditions required by the MGO.

The substance of this appeal is far less complicated than the accompanying procedural issues. Quite simply, the MGO requires that before the plan commission may approve a waterfront development conditional use, it must first find that certain conditions are present [MGO §28.12(11)(g)] and that certain standards are met [MGO §28.04(19)(b)]. In its haste to conclude a meeting that had stretched into the early hours of the next morning, the plan commission approved the conditional use by summary motion, without additional debate or comment, and without a finding that the requisite standards and conditions had been satisfied. As required by the MGO, the task of the plan commission is incomplete. The approval of the conditional use must be reversed until the plan commission properly makes the requisite findings.

The plan commission's authority to grant a waterfront development conditional use is conditioned on finding certain conditions and standards.

The conditions and standards set forth in the MGO are not inconsequential. The plan commission's authority to grant conditional uses is bestowed by the common council, but that authority is restricted. The plan commission is not authorized to act in its sole discretion. Rather, the authority must be exercised within the parameters of the authorizing ordinance. Unless the plan commission explicitly finds that the standards are met and the conditions are present, the plan commission has no authority to approve a conditional use.

The missing findings are fundamental to proper consideration of the Edgewater Hotel project.

These standards and conditions go to the very issues which petitioners have repeatedly asked the city to carefully and thoughtfully consider. They include the adequacy of access and parking, the movement of vehicles and pedestrians, and the management of transportation. The conditions reflect the basic purposes of the city's zoning ordinances: to protect and preserve public health, safety, and general welfare; and, the normal and orderly development and improvement of the surrounding property. The requisite findings are

fundamental to proper consideration of the issues. Absent a record of these findings, the plan commission lacks both the jurisdiction and proper legal basis for the conditional use approval.

Neighbors are entitled to an explanation supporting the approval of the conditional use.

Each neighbor of the Edgewater Hotel project is entitled to examine the basis upon which the plan commission made its decision. A proper record by which the requisite findings are considered and made allows this review. Without such a record, neighbors are deprived of the opportunity to consider and evaluate the propriety of the plan commission's decision. On appeal, the absence of a record as to these findings prevents the common council from considering whether the plan commission made a proper, just and equitable decision. Without a record as to these findings, the common council has nothing to review and this matter should be remanded to the plan commission for proper consideration.

It is not the common council's role to find reasons to grant the conditional use.

The decision to grant a conditional use does not belong to the common council. That task has been assigned to the plan commission. But the common council has retained the authority to determine if the action of the plan commission "is just and equitable" or requires reversal or modification. MGO §28.12(11)(i).

The task before the common council is to review the decision of the plan commission, not make a decision for the plan commission. It is improper to suggest that the common council can scan the record of the plan commission meeting to evaluate whether adequate evidence exists to make the requisite findings that should have been made. That is not the job of the common council. The council must only review the adequacy of the plan commission decision and its findings, not perform the task of making findings for the plan commission. If the findings have not been made, the conditional use approval cannot stand. The council cannot fix the absence of findings by the plan

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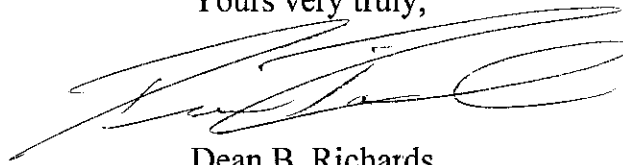
commission. At best, it must recognize the absence of findings and remand the matter for further proceedings by the plan commission.

Decisions related to the Edgewater Hotel project are some of the most significant to be before the city in recent time. The issues presented span virtually every aspect of zoning and land use regulation within the city. Yet the city, well intentioned though it may be, repeatedly considered these important issues hastily or in the late hours of marathon meetings. The citizens of the city and the neighbors of the project deserve better. At the very least, the petitioners are entitled to compliance with the ordinances by both the city and the developer. Those ordinances protect the value of property, as well as the integrity of the system. Please do not short cut the conditional use process.

We request that the common council recognize the infirmities of the plan commission decision. Please remand this matter back to the plan commission so that the requisite findings can be considered.

Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Dean B. Richards', written in a cursive style.

Dean B. Richards

REINHART\3586081\DBR:DBR

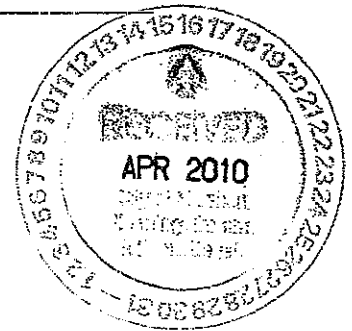
Encs.

**CITY OF MADISON
PLAN COMMISSION**

In Re:

**Conditional Use for Waterfront Development
Edgewater Hotel
666 Wisconsin Ave.**

Legistar LD. #17311



**FIRST AMENDED
APPEAL FROM ACTION BY CITY PLAN COMMISSION**

TO:

Mark A. Olinger
Secretary
City of Madison Plan Commission

PLEASE TAKE NOTICE, that the undersigned, constituting not less than 20% of the property owners notified of this matter, object to the establishment of a Waterfront Development Conditional Use for the Edgewater Hotel, 666 Wisconsin Ave., as approved by the City of Madison Plan Commission on March 23, 2010, and do hereby appeal said decision to the Common Council of the City of Madison pursuant to §28.12(11)(i) of the City of Madison Zoning Code.

PLEASE TAKE FURTHER NOTICE, that this amended appeal is filed within ten days of petitioners receiving the list of notified property owners from the City of Madison. Upon receipt of said list, the appellants were placed on notice that the City of Madison will base their eligibility and validity review for this appeal not upon the mailing list filed in the office of the City Clerk or posted as the mailing list for the March 22, 2010 plan commission meeting, but rather upon a mailing list on file with the City of Madison planning department. This First Amended Appeal From Action By City Plan Commission is filed to amend the prior appeal by adding signatories not included on the initial mailing list and therefore not included on the initial appeal.

The grounds for this appeal are as follows:

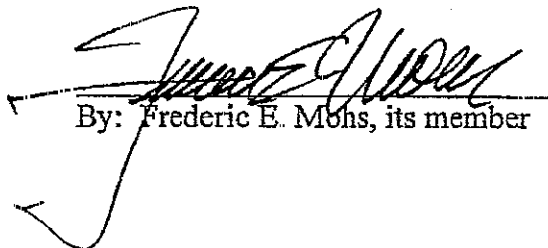
1. A Waterfront Development Conditional Use for the Edgewater Hotel was considered by the Plan Commission at its meeting of March 22 and 23, 2010.
2. The Waterfront Development Conditional Use was approved by voice vote following a motion for approval.
3. The Plan Commission approved the motion without debate or consideration.
4. City of Madison Zoning Code §§28.04(19)(b) and 28.12(11)(b) & (g) require that no application for a conditional use shall be granted by the City Plan Commission unless such commission shall find that the conditions of §§28.04(19)(b)1-7 and §§28.12(11)(g)1 – 11 are present.
5. The Plan Commission proceedings of March 22 and 23, 2010 did not include consideration of these standards and the Plan Commission failed to find that all of the described conditions are present.
6. Absent a specific finding that the requisite conditions are present, the Plan Commission cannot grant the requested conditional use application.

Appellants respectfully request a hearing of this appeal before the City of Madison Common Council, a ruling that the Plan Commission failed to make the requisite findings before granting the conditional use application, and a reversal of the Plan Commission approval of the Waterfront Development Conditional Use.

Signatures appear on the following page.

Dated this 14th day of April, 2010

Wisconsin Ave. House LLC
Owner of 516 Wisconsin Ave.
Tax ID 0709-144-0814-5



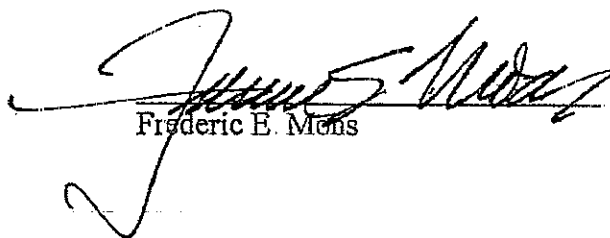
By: Frederic E. Mohs, its member

Dated this 14th day of April, 2010

Frederic E. Mohs
Owner of:
1 Langdon Street
Tax ID 0709-144-0801-2

504 Wisconsin Ave.
Tax ID 0709-144-0812-9

512 Wisconsin Ave.
Tax ID 0709-144-0813-7



Frederic E. Mohs

This amended appeal has been drafted on behalf of the appellants by:

Atty. Dean B. Richards
Reinhart Boerner Van Deuren sc
P.O. Box 2265 22 East Mifflin St.
Waukesha, WI 53187-2265 Madison, WI 53701-2018
262-951-4561 608-229-2200
drichards@reinhartlaw.com



Reinhart Boerner Van Deuren s.c.
P.O. Box 2265
Waukesha, WI 53187-2265

N16 W23250 Stoneridge Drive
Suite 1
Waukesha, WI 53188

Telephone: 262-951-4500
Facsimile: 262-951-4690
reinhartlaw.com

April 13, 2010

Dean B. Richards
Direct Dial: 262-951-4561
drichard@reinhartlaw.com

SENT BY E-MAIL AND
FIRST-CLASS MAIL

Atty. Katherine C. Noonan
Madison City Attorney's Office
210 Martin Luther King Jr. Blvd.
Room 401
Madison, WI 53703-3345

Dear Ms. Noonan:

Re: Conditional Use Appeal
Edgewater Hotel

Thank you for your e-mail of April 13, 2010, by which you transmitted your itemization of property owners eligible to appeal the plan commission decision of March 22, 2010 with respect to the Edgewater Hotel project. I respectfully disagree with your analysis and tabulation. As to your exclusion of the Edgewater Hotel property, I will concur. As to your exclusion of the condominium owners' associations, I will concur, but note that the petition previously filed meets the ordinance requirements whether these associations are counted or not.

Our disagreement centers on the counting of owners of multiple properties. As to Frederic E. Mohs and National Guardian Life Insurance, we believe each should be counted as a single owner, but you count each as an owner for each of the properties they own.

I respectfully request your reconsideration of this issue. Sec. 28.12(11)(i), MGO requires that an appeal be signed "...by twenty percent (20%) or more of the property owners notified...". The base against which the 20% is to be applied is "property owners", not "properties". In the case of Mr. Mohs and National Guardian Life Insurance, each constitutes a single owner, notwithstanding the ownership of multiple properties.

Atty. Katherine C. Noonan
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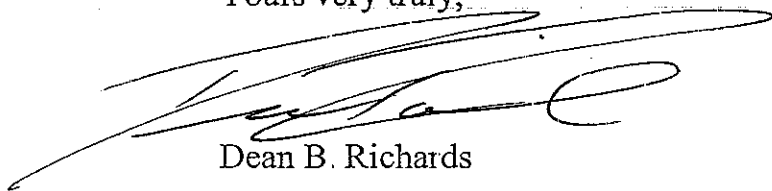
The use of "property owners" contrasts with Sec. 28.12(10)(g)1, MGO regarding zoning protest petitions. In that section, the common council has directed that a zoning protest petition must be signed by "...the owners of twenty percent (20%) or more..." of the defined lands. Clearly, two different methodologies for determining eligibility exist, each of which would result in a different tabulation of eligible property owners. For its ordinance controlling plan commission appeals, the common council has chosen the methodology that refers to a count of individual owners, rather than the number of properties affected or the area of property affected.

Accordingly, your corrected count of notified property owners should total 26 property owners without the condo associations and 28 with the condo associations. In either case, the notice of appeal includes the signatures of six property owners who were notified via your list and these six signatures constitute 20% or more of the property owners notified. Accordingly, the appeal is valid.

Please advise as to your reconsidered analysis of this issue. Should you choose not to accept the appeal as filed, we ask that we be notified as to the city's final decision on this issue so that appropriate action might be undertaken. While I respect the value of your opinion memo, I would consider the memo to be advisory to the city clerk and it should be the clerk or Mr. Olinger who makes a formal and final decision as to the validity of the appeal.

Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Dean B. Richards", written over a horizontal line.

Dean B. Richards

REINHART3466862DBR:DBR

Enc.

cc Fred Mohs, Esq.

Edgewater CUP Mailing List

	Property Owner	Property Address
1.	17 Langdon Street LLC	17 Langdon St.
2.	22 Langdon LLC	22 Langdon St.
3.	Alpha Phi Chap. House Assoc.	28 Langdon St.
4.	The Ambassador by the Lake LLC	522 N. Pinckney
5.	Apex 529 LLC	529 N. Pinckney
6.	Beta Gamma Housing Corp.	12 Langdon St.
7.	Verda A. Blythe	519 N. Pinckney Unit C
8.	CWJ 2 LLC	2 Langdon St.
7.	Eugene S. Devitt	28 E. Gilman St.
10.	William & Kim Donovan	531 N. Pinckney St. Unit B
	Edgewater Hotel	666 Wisconsin Ave.
11.	Fitzpatrick Rev. Trust	531 N. Pinckney St. Unit D
12.	Fraternity of Phi Gamma	16 Langdon St.
13.	Harcroft 104 LLC	104 E. Gilman St.
14.	Harlowe Rev. Living Trust	519 N. Pinckney St. Unit B
15.	Jerry M. Hiegel	531 N. Pinckney St. Unit E
	Hobbs/Van Vleck House CDM Assoc.	525 N. Pinckney
16.	Kenneth Miller, et. al.	515 N. Pinckney St.
17.	Frederic E. Mohs	504 Wisconsin Ave.
18.	<i>Frederic E. Mohs</i>	512 Wisconsin Ave.
19.	<i>Frederic E. Mohs</i>	1 Langdon St.
20.	Morgan House Apts. LLC	10 Langdon St.
21.	National Guardian Life Insurance Co.	2 East Gilman St.
22.	<i>Nat'l Guardian Life</i>	530 N. Pinckney St.
23.	<i>Nat'l Guardian Life</i>	516 N. Pinckney St.
24.	<i>Nat'l Guardian Life</i>	520 N. Pinckney St.
25.	Emil & Sara Paguia	519 N. Pinckney Unit D
26.	Alberto Palloni	519 N. Pinckney St. Unit E
27.	Pinckney Holdings LLC	531 N. Pinckney St., Unit F
	Pinckney Place CDM Owners Assoc	533 N. Pinckney
28.	Pinckney Properties LLC	531 N. Pinckney Unit C
29.	Irwin & Linda Smith	531 N. Pinckney Unit A
30.	Nigel Wallbank & Rachel Miller	519 N. Pinckney St. Unit A
31.	Wisconsin Ave. House LLC	516 Wisconsin Ave.