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September 17, 2010

VIA HAND-DELIVERED

Alderson Mark Clear, President
District 19
City of Madison
City-County Building
210 Martin Luther King, Jr. Blvd., 4th Floor
Madison, WI 53703

RE: Showing and Rerenting Rental Premises

Dear Mark:

I represent Steve Brown Apartments ("SBA"), relating to the above proposed ordinance amendment that you will be considering at your meeting on September 21, 2010. The Housing Committee (the "Committee") has reviewed this matter since December of last year and considered five versions of this amendment. After this thorough review, the Committee voted 7-2 against this proposal. Most of the Committee members who voted against this proposal are not representatives of the rental housing sector, so the overwhelming vote against this proposal reflects a consensus that this amendment is not in the interests of residents nor owners.

SBA joins the Apartment Association of South Central Wisconsin ("AASCW") to urge you to place this matter on file. Below is a summary of why my client is convinced that for both policy and legal reasons, this proposal is not in anyone's interest.

1. This Proposal Will be Contrary to the Interests of Residents.

- The proposed change would compress the time to consider apartment options to less than eleven (11) weeks. This ordinance would prohibit renters to consider housing options no earlier than February 15, assuming a beginning lease date of August 15. Spring break and finals will further reduce the "shopping time."

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- As a result of the compressed time period, the showings would significantly inconvenience student renters resulting in the loss of privacy.
- Students need to maintain as much flexibility as possible as to when the lease period begins for the next year since they have to move for so many reasons.
- Students should have the same choice about where and when to contract for housing as other renters do.
- Since the ordinance would apply to the entire rental market in Madison, it restricts the rights of all renters. In effect, the ordinance uses a sledge hammer when a fly swatter would work.
- The number of students in Madison totals over 61,000. The supposed purpose of this amendment is to protect freshman. However, the number of freshman that will attend the UW-Madison as of September, 2010, is only 12% of the total UW student population. Also, about 25% of UW freshman are not even a part of the rental market since they renew their dormitory leases.

2. The Proposal Would be Contrary to the Interests of Owners.

- The compressed time period to show an apartment would result in a significant increase in showings and increased marketing costs.
- For example, in 2009, SBA had an average of less than 100 showings a month. Enclosed is a chart which shows that the SBA showings remained fairly constant each month last year. Under the Maniaci proposal, SBA would have to conduct **100 showings a week rather than 100 showings a month.**
- Last year, SBA responded to more than 3,500 housing inquiries. These inquiries, if the ordinance is adopted, would have to be responded to by overworked staff since decisions would have to be made in a much tighter time period. Thus, the rental market would become more frenzied and chaotic.

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- The ordinance change would lead to additional administrative costs and a loss of jobs in the property management field since owners would not be permitted to lease apartments as much as six (6) months into the lease term.
 - A “black market” would be created because desirable units will be kept away from the general market.
- 3. The Portion of the Proposal Which Would Eliminate the Option of Owner and Resident to Enter into a Non-Standard Rental Provision (“NSRP”) as it Relates to Negotiating a Different Time for the Owner to be Able to Lease the Apartment Would Directly Violate State Law.**
- The Wisconsin Administrative Code specifically allows the owner to add to the lease as an addendum an NSRP to provide for a different time during the lease where the owner can show and lease the apartment. See ATCP §134.09(2)(c).
 - The NSRP is an important consumer protection provision because it allows the owner and the resident to agree to various lease items in simple and direct language. Any effort to limit the scope of the NSRP is contrary to the interests of both residents and owners.
 - Because the State has specifically carved out language that provides the option for an owner and resident to agree, as part of an NSRP, to a date when a unit can be shown, the City is prohibited from adopting an ordinance that contradicts State law.
- 4. To Require an Owner to Rent to an Existing Resident as Opposed to Another Prospective Resident Directly Violates the Owner’s Freedom to Contract.**
- The right of first refusal language represents an end run to undercut one of our basic freedoms – the freedom to contract.
 - Even the Assistant City Attorney admitted at the Housing Committee deliberations on September 1, 2010, that there was probably no compelling interest that would justify the City violating the constitutional principle of the right of freedom to contract.

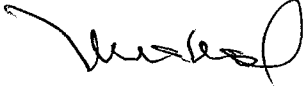
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- In an effort to avoid a direct legal conflict, the proposal attempts to define when an owner has a reasonable basis to decline the renewal of a lease to an existing tenant. The standards are so vague and open to subjective arguments that it creates a full employment law for lawyers. Constant litigation will become the rule not the exception.

Please review the letter prepared by SBA which addresses some of the practical problems that would result for both owners and residents if this ordinance amendment were adopted. In conclusion, this ordinance amendment represents heavy-handed regulation in search of a problem.

Sincerely,

DEWITT ROSS & STEVENS s.c.



Michael R. Christopher

MRC:dso
Enclosure

cc: Mayor David J. Cieslewicz (w/encl. – via email only)
City Attorney Michael May (w/encl. – via email only)
City Clerk Maribeth Witzel-Behl (w/encl. – via email only)