

February 14, 2013

Mr. Mark Stockman, Chairman
Mr. Dru Siley, Secretary
Lakewood Planning Commission
Lakewood City Hall
12650 Detroit Avenue
Lakewood, OH 44107

Messrs. Stockman and Siley:

Please use this letter as our formal request to appeal the decision made by the Planning Commission relative to docket item 12-26-12. The appeal is based upon five points summarized as follows and detailed below:

- The applicants were not provided the option to have the vote deferred until which time the new member could "get up to speed"
- The abstention by a new member was a result of an unnecessary delay in the process caused by the City Administration
- Unnecessary confusion caused by Assistant Law Director regarding the designation applying to "Buildings" v. "Site"
- Unnecessary confusion caused by Secretary regarding the matter of "Affirmative Maintenance" as it relates to hardship
- Inconsistent application of the ordinance with regards to "Commercial" property and "Residential" property...a distinction not made in the Ordinance

Following is additional information on each subject:

OPTION TO DEFER

The applicants learned new member of the Planning Commission, William Gaydos, would abstain from participating on this issue during a Pre-planning meeting held in the lower level conference room 30 minutes before the start of the regular meeting. The Chairman of the Planning Commission did not provide this information; it was given by Dru Siley (Lakewood's Director of Planning and Development). This gives the impression that the City Administration requested the abstention. Regardless, the option to defer a decision until the new member could adequately educate himself was not offered. Being given the option to defer is common practice with Planning Commissions of other cities. Notably, the new member continued to vote on all other agenda items that evening.

DELAY IN PROCESS NEEDLESSLY CAUSED BY THE CITY ADMINISTRATION

The application for Historic Designation was submitted on September 4, 2012 and supported by letters from more than a dozen residents. The intent was to have the application on the October agenda of the Planning Commission. *After* the agenda was published the applicants learned the item was not included because the application "hadn't received the approval of the Lakewood Heritage Advisory Board." The application was then endorsed a second time by LHAB at its next meeting clearing the way to have the application on the November agenda of the Planning Commission. Again, the item was kept off. This time, the reason: a question as to whether a person who is not the property owner could nominate a property and if any attempts had been made to inform the property owner that the designation is being submitted. *Both* issues were ultimately over-ruled. The ordinance is very clear on the subject:

(b) Initial Designation Procedure: The Commission may propose designations of any area, place, building, structure, work of art or other object as an HPD or HP on its own initiative or upon the recommendation of the Heritage Advisory Board or upon a request by an owner of a property. Proposals for designation must be accompanied by information with respect to the

(h) Application for Historic Status Determination: The applicant(s) shall attempt to secure the written consent of the property owner(s) for the determination of a property as a HP. However, written approval is not required for the property to be determined as an HP. In the event that such owner refuses or declines to or otherwise does not give written consent to the proposed determination as a HP, upon the applicant's application the Commission shall schedule a public hearing on the question of the proposed determination. In regards to a HPD, the

This two-month delay meant the Commission membership would change before the application went through its two-meeting hearing process. In other words, the Commission that unanimously voted the property "eligible for designation" would not be the same Commission that ultimately voted on the designation...all due to unnecessary delays caused by the City Administration.

BUILDINGS v. SITE CONFUSION

At a critical juncture just prior to voting on the motion to approve, and after public comment had been closed, the Assistant Law Director created additional confusion when a Commission member asked for clarification on whether the designation was on the house, the property, or both. The Application form, modeled after the National Register form, asks the submitter to select appropriate boxes. Because SITE was not checked the Assistant Law Director assumed the property was not part of the designation and stated so. However, upon 'reading' the application including the Geographical Data section and the three separate narrative paragraphs describing the works of notable landscape architect, Albert D. Taylor, it is clear that the entire property, including both parcels and the buildings, are included in the designation. Furthermore, SITE, refers to places such as, Lakewood Park, Kauffman Park, etc.

AFFIRMATIVE MAINTENANCE/HARDSHIP CONFUSION

The ordinance is silent on the subject of hardship *prior* to receiving a designation. In other words, hardship only becomes an issue *after* the designation is made. Furthermore the question of hardship only relates to the issuance of a Certificate of Appropriateness by the Architectural Board of Review. The question of "hardship" came up during the deliberations and confusion was created when the Secretary related hardship to "Affirmative Maintenance". On the issue of Affirmative Maintenance the requirements of a historic property are not materially different than are required by *all* Lakewood property owners under other Lakewood Ordinances. The following stipulates that the property must be maintained per the Building Code; it does not require submission of a written plan, which was stated by the Semaan's attorney, and affirmed by the Secretary when he simply read first paragraph of Section 1134.12 rather than clarifying the misstatement.

1134.12 AFFIRMATIVE MAINTENANCE.

Every owner, operator, or agent of any property which has been determined HPD or HP shall keep in good repair all of the exterior portions and all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portion of such area, place, building, or structure, work of art or other object to deteriorate, decay or become damaged or otherwise fall into a state of disrepair. Every owner, operator or agent of any property which has been determined HPD or HP shall further keep in good repair all portions of any area, place, building, or structure, work of art or other object which, if not so maintained, may cause or tend to cause such portions to deteriorate, decay, or become damaged or otherwise fall into a state of disrepair.

- (a) The repair and maintenance required by this section includes, without limitation:
- (1) Developing and implementing a maintenance and monitoring plan for protecting each portion of any area, place, building, or structure, work of art or other object.
 - (2) Structurally stabilizing each Improvement and Improvement parcel by taking all steps necessary to ensure:
 - A. The roof is watertight;
 - B. Gutters are properly pitched and cleared of debris;
 - C. Downspout joints are intact;
 - D. Drains are unobstructed;
 - E. Windows and door frames and wood siding are in good condition;
 - F. Masonry walls are properly tuck-pointed to keep out moisture;
 - G. The Improvement parcel is graded for proper water run-off;
 - H. Vegetation is cleared from around each Improvement; and
 - I. Trash, debris and hazardous materials such as inflammable liquids, poisons and paints are removed from the interior of each one (1) of any area, place, building, or structure, work of art or other object on a continuous basis.

Furthermore, this clause does not prevent the property owner from pursuing a demolition permit. It merely prevents the property owner from creating 'demolition by neglect', something Mr. Semaan stated publicly at the meeting he will do. This clause does not require a property owner to change electrical wiring, heating systems or internal conditions. It only requires the property to be watertight, so as not to cause significant damage to the property.

INCONSISTENT APPLICATION OF THE ORDINANCE

Prior to receiving the Application for Historic Designation for the Sly Mansion the Planning Commission voted to designate the Christian Science Church at 15422 Detroit Avenue. This designation was made despite the objections of the absentee property owner, California Phone, Inc. This company was incorporated on November 19, 2008 and has only one principal officer, Mr. Eric Choi. For all intents and purposes one individual owns this corporation, much as a husband and wife own the Sly Mansion. Notably, both owners have been absentee property owners of vacant buildings for more than a year. The decision to designate the Christian Science Church was later upheld in the Cuyahoga County Common Pleas Court of Judge Shirley Strickland Saffold. This inconsistency is a concern because some members of the Planning Commission publicly stated their intent to treat 'a residential property application different than a commercial property application.' The ordinance does not allow for such a distinction. Creating this unequal treatment subjects the process of both aforementioned properties to possible legal action.

Given the volume of public comment provided by several long-standing neighbors and *residents* of Lakewood it would seem a vote by all seven members is appropriate. The undersigned respectfully request that the Planning Commission reconsider the Historic Designation of the Sly Mansion.

Respectfully Submitted,



Mary Breiner and the undersigned:

