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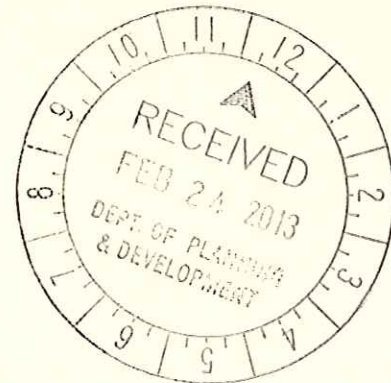
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February 22, 2013



Dru Siley, Director
Department of Planning and Development
City of Lakewood
12650 Detroit Ave.
Lakewood, OH 44107

Re: Semaan
13474 Edgewater Drive
Application for Historic Designation

Owners Michael and Stacey Semaans' Response

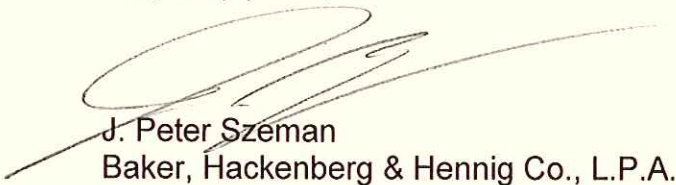
Dear Mr. Siley:

I am writing to you in your capacity as Secretary of the Planning Commission and that you please accept for filing with the Commission the enclosed Response of my clients, to be made part of the record.

I am happy to forward additional copies for distribution and/or an electronic copy should you require.

Please do not hesitate to call with any questions or concerns. Thank you.

Very truly yours,



J. Peter Szeman
Baker, Hackenberg & Hennig Co., L.P.A.

**BEFORE THE PLANNING COMMISSION
CITY OF LAKEWOOD, OHIO**

IN RE: 13474 EDGEWATER DRIVE
HEIDELHOFF HOUSE

DOCKET NO. 12-26-12

OWNERS MICHAEL AND
STACEY SEMAANS'
RESPONSE TO THE "APPEAL"

Now come Michael and Stacey Semaan, owners of the subject property, by and through their counsel, and hereby submit their response to the "appeal" filed by various persons from the decision of the Planning Commission which did not, for lack of a majority vote, designate their property as historic.

These objections are in addition to those which may be raised at hearing and not necessarily exhaustive of the issues presented. The Semaans hereby reserve all additional objections to the application and the pending request which may be submitted at or before hearing, as well as all of their legal and equitable rights.

Lack of Legal Standing.

The Semaans must again renew their objection that the applicants in this matter have legal standing. Section 1134.03(b) is explicit with respect to who may make application for the initial designation:

The Commission may propose designations...on its own initiative or upon recommendation of the Heritage Advisory Board or upon a request by an owner of a property.

Again, this ordinance is being used by a few private citizens, not the owners of the property, not officials of the City, not even persons who can claim to be speaking on behalf of the over 50,000 residents of Lakewood. This is an unfortunate and incorrect interpretation of an ordinance that is allowing private parties with personal interests to place a cloud over the Semaans' property.

It is noted as well that persons, some of whom are unknown, signed the "appeal" document whereas the ordinance, addressed herein below, is clear that only the applicant may request a new hearing. Those signatures are improper. The Semaans should not have to defend their property rights against unknown persons who come forward after a decision was made.

It is asserted that the plain language of §1134.03(b) is being ignored. The Semaans re-assert that having to defend an application filed by third-parties who have no legal standing is improper and in violation of their rights.

The Application Was Given a Full and Complete Hearing.

The pertinent section of Lakewood's Code for the issue now before the Commission is §1134.03(m). It states that, within ten days after a denial, an application can be re-submitted "[i]f a request is made in writing by the applicant, setting forth the grounds thereof." It further states that the Commission must determine that "valid grounds" exist, in which event another hearing would be granted.

Fundamentally, this is a request for a rehearing. The ordinance does not elaborate on the meaning of "valid grounds." However, basic due process requires that parties not be forced to continue to re-litigate issues in perpetuity.

The Commission conducted a lengthy hearing. No one was denied the opportunity to speak or to present whatever evidence they wanted the Commission to consider. The individuals seeking a rehearing do not claim otherwise. They proffer no new evidence or anything that -- in the week or so that passed from the Commission's decision to the date of filing of the request -- would even suggest that any changed circumstances occurred. They are simply asking for the entire hearing to be re-done because they did not like the outcome.

The Commission already has before it a complete record. Another hearing, duplicating what already was heard and submitted, is simply improper and the proverbial "second bite at the apple" that runs contrary to basic due process.

Minor Delays in Conducting the Hearing Caused No Prejudice.

The applicant complains because the newest member of the Commission recused himself from the hearing. In a related argument, the applicant also blames the Administration for purported delay.

The reality is that a Commission member can recuse themselves from hearing any application at any time, even if only on personal grounds. It is purely speculative to suggest that the new Commission member would have voted one way or the other on this matter. Such speculation is not grounds for legal relief.

Second, the applicant's position ignores the Semaans' due process rights. It was the Semaans who had to hire legal counsel, who had to incur expenses to have the property inspected, and to prepare a rebuttal for an application that has a substantial effect on their property rights. The Commission did the legally appropriate thing in allowing the Semaans adequate time to prepare.

In complete disregard of the Semaans' rights, the applicants requested the Commission to proceed at its January 3 hearing. It should be noted this demand was made even though there was not a full Commission for that hearing -- only four members were present. (See, 01/03/13 Commission Minutes). If the applicant was fine with only the four Commission members present for the January meeting hearing and deciding this matter, then, now objecting to six members hearing and deciding it is completely disingenuous.

This matter was handled expeditiously, thoroughly, and with due concern for the rights of the Semaans to prepare their case. Deferring the hearing for a month caused no one prejudice. In fact, it avoided prejudice to the Semaans. The Commission did the legally appropriate thing and it serves no basis in fact or law to have to start this entire process over and for this cloud to continue to hang over the Semaans' property. They are entitled to finality in this process.

Building Versus Site Designation.

The applicant claims the Commission erred in not considering the "site" for historic designation. This is a clear post hoc argument. The applicant, during the Commission's deliberations, decided that the application no longer applied to just the house, that it also applied to the site as well.

The record is clear – the application never requested the "site" to be designated as historic. Simply having a required legal description in an application is wholly insufficient to place a property owner on notice that the application pertained to the site. If there was error, it was on the part of the applicant alone. An applicant cannot complain about an error it caused.

It should also be clarified that the "site" is a residential yard. There was no evidence presented during the hearing about the yard. There was no discussion of historic events having taken place there or that a noteworthy landscape architect designed it. Absolutely nothing was presented to designate the Semaans' yard as historic for the simple reason that it was never at issue in the first place. And, even if the Commission were to have voted on the question, the outcome would be the same because the Commission simply had no evidence before from which it could conclude the yard is historic and therefore could legally be designated as historic.

Finally, some common sense needs to be brought to the table. Why would a homeowner's private yard be designated as historic? As stated above, nothing historic happened there. It is just a yard. Should the Semaans have to request a certificate of appropriateness if they want to plant a vegetable garden? This is just another means by which a small group of people continue to pursue a private agenda. It is a post hoc argument and has no merit.

Purported Confusion Regarding the Ordinance.

The applicant makes a final issue of purported confusion regarding the meaning of the ordinance. There is no confusion. The language of the ordinance speaks for itself. The fact that the Commission took the time during its deliberations to discuss the applicable Code sections, obtain opinions from the Assistant Law Director and staff, and base its decision on an informed understanding of the legal implications of the request

before it speaks to the Commission's proper, careful deliberation. And that is the last thing anyone should be complaining about.

Conclusion.

The Semaans submit, for all of these reasons, that there exist no grounds to conduct another hearing on the application and that the request is properly denied.

Respectfully submitted,



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