

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

GLEN ANN PLACE, LLC and
JOSEPH FREED & ASSOCIATES,

Case No.: 07-295-AA

Petitioners/Plaintiffs,

Judge: Hon. Timothy P. Connors

v.

STATE OF MICHIGAN HISTORIC PRESERVATION
REVIEW BOARD, AND THE ANN ARBOR
HISTORIC DISTRICT COMMISSION, and
CITY OF ANN ARBOR,

Respondents/Defendants.

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Attorneys for Plaintiff
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City of Ann Arbor
Attorneys for Defendants
Ann Arbor Historic District Comm.
and City of Ann Arbor
By: Stephen K. Postema (P38871)
By: Kristen D. Larcom (P39550)
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CONSENT JUDGMENT

This Consent Judgment is presented to the Court pursuant to the stipulation of the parties under the terms of a Settlement Agreement and Release ("Agreement"). This Court has determined that this proposed Consent Judgment is reasonable and just and is fully advised in the premises. Therefore, the Court makes the following findings and order.

FINDINGS

1. Petitioner/Plaintiff Glen Ann Place, LLC is a Michigan limited liability company and Petitioner/Plaintiff Joseph Freed and Associates, LLC is an Illinois limited liability company. (hereinafter, the Petitioners/Plaintiffs will be referred to as "Glen Ann").
2. Petitioner/Plaintiff Joseph Freed and Associates, LLC has been identified previously in the case caption and pleadings filed in this case as Joseph Freed & Associates, an Illinois corporation.
3. Respondent/Defendant City of Ann Arbor ("City") is a Michigan municipal corporation and Respondent/Defendant Ann Arbor Historic District Commission ("Historic District Commission") is a historic district commission established by the City of Ann Arbor under the Michigan Local Historic Districts Act ("LHDA") (MCL §§ 399.201 et seq.).
4. Appellee State of Michigan Historic Preservation Review Board ("Review Board") is an agency of the State of Michigan with jurisdiction to review decisions made by local historic district commissions under the LHDA.
5. Glen Ann owns five parcels of land at the corner of Glen and Ann streets in Ann Arbor, Michigan, including a parking lot at 217 Glen, a small commercial building at 1025 E. Ann St., a former gas station at 201 Glen, and two houses at 213 and 215 Glen ("Houses"). Plaintiff assembled these parcels for the purpose of constructing a mixed-use building including residential, retail, and office space, referred to as Glen Ann Place (the "Project"). All five parcels are within the City's Old Fourth Ward Historic District ("OFWHD"), which is a Michigan local historic district operating under Chapter 103 of the Ann Arbor City Code and the LHDA.

6. The Houses are historic resources under the OFWHD and the LHDA, and approval of the Historic District Commission is required for any exterior alterations, including construction, demolition, addition, moving, and excavation of historic resources.
7. Glen Ann's proposed building required rezoning of the assembled parcels to a Planned Unit Development ("PUD") and required submission of a site plan to be approved by City Council. On July 5, 2005, City Council rezoned the assembled parcels to a PUD and approved the site plan subject to the occurrence of five conditions, one of which was that the Historic District Commission approve the demolition of the Houses as well as the proposed building.
8. At its regular meetings on August 11, 2005 and September 8, 2005, the Historic District Commission considered Glen Ann's application for demolition of the Houses and application for construction of the Project. After public hearings and deliberation, the Historic District Commission denied both the application for demolition and the application for construction of the Project.
9. Glen Ann appealed by right the decision of the Historic District Commission denying a permit for demolition of the Houses to the Review Board. After a hearing, an administrative law judge issued a nonbinding Proposal for Decision, finding that Glen Ann was entitled to a demolition permit under the City's historic district ordinances and the LHDA. At its September 15, 2006 meeting, the Review Board rejected the Proposal for Decision and affirmed the Historic District Commission's denial of the demolition permit.
10. On January 19, 2007, the Review Board issued a Final Decision and Order which affirmed the decision of the Historic District Commission to deny the application to demolish the Houses.

11. Glen Ann commenced this lawsuit in Circuit Court challenging the determination of the Historic District Commission and the Review Board to deny the demolition permit. Glen Ann named the City, the Historic District Commission, and the Review Board as defendants.

12. The City and Historic District Commission filed an answer denying all of the allegations in Glen Ann's lawsuit.

13. The City, the Historic District Commission, and Glen Ann now wish to settle this lawsuit in accordance with the terms and conditions set forth below and in the Agreement, in order to avoid further costs and expenses and the uncertainty of trial.

14. The settlement of this action shall not be construed as a determination on the part of the Court that either the City, the Historic District Commission, or Glen Ann that any party has breached any duty or committed any act which gave rise to liability as alleged in the pleadings or otherwise. Similarly, the settlement of this action shall not be taken or construed as a determination of the part of the Court that either the City, the Historic District Commission, or Plaintiffs of the strength or weakness of any of the parties claims or defenses.

ORDER

THEREFORE, IT IS HEREBY ORDERED:

1. The requirements of Chapter 103, Sections 8:412 and 8:416 of Ann Arbor City Code are deemed to have been satisfied for the purposes of the issuance of a permit for the demolition of the Houses.

2. Glen Ann is issued approval of a permit to demolish the Houses by the Historic District Commission.

3. The requirements of Chapter 103, Sections 8:412 and 8:416 of Ann Arbor City Code are deemed to have been satisfied for the purposes of the issuance of a permit for the construction of the Project.

4. Glen Ann is issued approval of a permit to construct the Project by the Historic District Commission.

5. Glen Ann shall modify the site plan for Glen Ann Place in the following significant ways:

- a. Reduction of the ten story building to a nine story building.
- b. Color on the elevations shall be modulated between red and limestone to segment the massing of the building.
- c. The retail / office levels of the building shall be recessed on the East elevation at the color modulation lines to strengthen the architectural articulation of the façade.
- d. The balcony recesses shall be made a Verde color that is darker than the base color of the building to highlight the vertical augmentation of the façade.

6. Modifications to the building are generally shown on the elevation drawings attached as Exhibit A and are incorporated herein.

7. Glen Ann shall submit to the City of Ann Arbor Planning and Development Services Unit a complete set of Revised Site Plan drawings (“Revised Site Plan”), including revised final elevation drawings that show the above design modifications, by November 16, 2007.

8. The Revised Site Plan shall otherwise be consistent with the site plan approved by City Council on July 5, 2005, and shall comply with the requirements of Ann Arbor City Code and the revised PUD zoning and Supplemental Regulations, and Development Agreement approved by

Ann Arbor City Council on July 5, 2005, including, but not limited to Glen Ann paying the City of Ann Arbor an affordable housing contribution of \$1,058,000 to be deposited in the City of Ann Arbor Affordable Housing Trust Fund prior to the issuance of the first certificate of occupancy for the Project.

9. The final Project may include up to 112 residential dwelling units, provided that the residential units meet all requirements of the PUD Supplemental Regulations (“PUD Regulations”) for the Project as approved by City Council on July 5, 2005.

10. The final Project shall provide 17 Class A bicycle parking spaces, 3 Class B bicycle parking spaces and 30 Class C bicycle parking spaces for a total of 50 bicycle parking spaces, notwithstanding the stated requirements of the PUD Regulations.

11. Prior to application for and issuance of certificates of occupancy for the Project, Glen Ann shall disconnect a maximum of 29 footing drains from the sanitary sewer system. The final number of footing drain disconnects shall be approved by the City Public Services Area applying the Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor – Development Offset-Mitigation Program (November 2005 edition, as amended). Glen Ann shall be allowed to obtain partial certificates of occupancy for the Project prior to the completion of the total number of required footing drain disconnects on a prorated basis, at the discretion of the City Public Services Area.

12. Glen Ann shall submit construction drawings for permit review and obtain all necessary building and trade permits and approvals prior to construction. Glen Ann agrees to pay any normal and customary fees associated with these permits and all other approvals.

13. The Revised Site Plan shall be granted site plan approval by the City effective November 30, 2007.

14. Consistent with Chapter 57, Section 5:123(5), and Chapter 103, Section 8:413(4), of Ann Arbor City Code, approval of permits for demolition of the Houses and construction of the Project, as well as the Revised Site Plan shall terminate three years after the effective date of the Revised Site Plan.

15. All claims asserted in this case and/or related to this Consent Judgment against the State of Michigan Historic Preservation Review Board shall be dismissed with prejudice.

16. This Consent Judgment does not in any way invalidate, overrule, or otherwise address the Final Decision and Order of the State of Michigan Historic Preservation Review Board, dated January 19, 2007, and therefore, has no effect on that ruling, as a matter of law.

17. This Consent Judgment and Revised Site Plan were consented to and agreed on by the named parties for the purposes of settlement only, and may not be relied on as precedent by any other party for the City or Historic District Commission's interpretation or application of Chapter 103 of Ann Arbor City Code.

18. Glen Ann Place, LLC and Joseph Freed and Associates, LLC (and their respective successors, successors and assigns) releases and forever discharges the City and the Historic District Commission (and their other respective affiliates, successors, predecessors, assigns, officers, directors, trustees, transferees, employees, boards and commissions and attorneys) of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, executions, damages, statutory or other attorney fees, and rights of whatever nature in law, equity or otherwise which now exist or which may subsequently accrue by reason of any acts, events or facts existing on the date of

this Consent Judgment, whether known or unknown on that date, including by way of illustration but without limitation any matter arising out of or relating to this lawsuit, Glen Ann's application to the Historic District Commission for a permit to demolish the two Houses from the City of Ann Arbor Historic District Commission, the denial of Glen Ann's application, Glen Ann's application to the Historic District Commission for a permit to approve construction of the Project, the denial of Glen Ann's application, the City's approval of the PUD zoning and site Plan of the Project, and/or any claims or causes of action arising under the Federal and State Constitutions or any federal or state statutes, rules or regulations.

19. All claims asserted in this case and/or related to this Consent Judgment will be dismissed with prejudice. However, nothing in this Consent Judgment shall bar any claims brought to enforce, interpret or otherwise obtain legal or equitable relief under or pursuant to this Consent Judgment.

20. The parties agree that the terms and conditions of the Agreement and this Consent Judgment are reasonable, adequately resolve the issues and protect the public interests and the interests of the parties.

21. The signatories to the Agreement and this Consent Judgment certify that they are authorized to execute this Agreement and legally bind the parties they represent.

22. The Agreement and this Consent Judgment are binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors, assigns, and transferees. Glen Ann may assign its rights or delegate its obligations under this Agreement and this Consent Judgment at its discretion.

23. This Consent Judgment may be amended, changed, waived, or modified only by a

written agreement executed by the parties and approved or ordered by this Court. No waiver of any provision of the Agreement and this Consent Judgment shall be valid unless in writing and signed by the party against whom the waiver is charged. There are no other representations or agreements between the parties other than those contained in this Consent Judgment, and the Agreement and Revised Site Plan.

24. Should any provision of the Agreement or this Consent Judgment be declared invalid, illegal, or unenforceable by any court of competent jurisdiction, by administrative order, or by reason of any rule of law or public policy, all other provisions shall nevertheless remain in full force and effect and no provision shall be deemed dependent upon any other provision unless so specified.

25. The parties shall execute any and all documents and/or enter into such agreements and/or take other actions as are necessary or convenient to carry out the intent of the Agreement and this Consent Judgment.

26. This Consent Judgment is declared to be in recordable form, and the covenants contained therein are declared to be covenants running with the Property and all portions or division thereof.

27. The Circuit Court for the County of Washtenaw retains jurisdiction to assure compliance with the terms of this Consent Judgment and Agreement and to grant whatever legal and/or equitable relief or remedies which the Court deems appropriate.

This is a final order which resolves all pending claims and closes the case pursuant to MCR 2.602 (A) (3)

/S/ TIMOTHY P. CONNORS

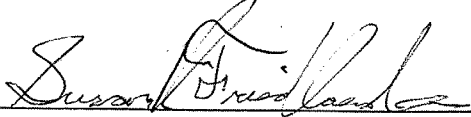
Honorable Timothy P. Connors

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**Glen Ann Place, LLC and
Joseph Freed and Associates, LLC**

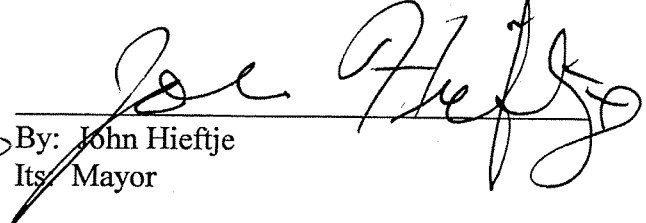
The City of Ann Arbor
Approved as to form and substance:

Approved as to form and substance:



By: Susan K. Friedlaender
Attorney for Plaintiffs

WITH PERMISSION
OF KEVIN S. McLENNAN
KEVIN S. McLENNAN

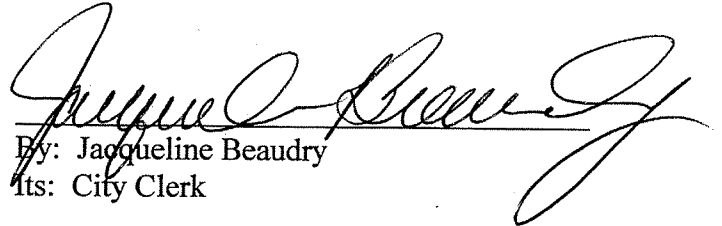


By: John Hieftje
Its: Mayor

Joseph Freed and Associates, LLC

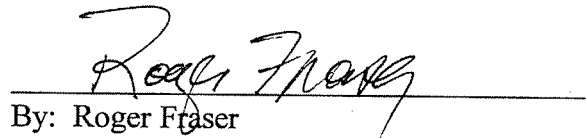


By: LARRY FREED
Its: CHIEF EXECUTIVE OFFICER



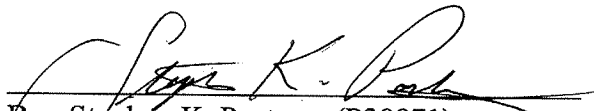
By: Jacqueline Beaudry
Its: City Clerk

Approved as to substance:



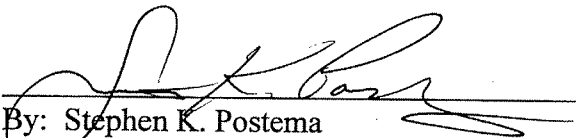
By: Roger Fraser
Its: City Administrator

Approved as to form:



By: Stephen K. Postema (P38871)
Attorney for Defendants

The Ann Arbor Historic District Commission



By: Stephen K. Postema
Attorney for Defendants



9 STORY OPTION

Glen Ann Place

A MULTI-USE DEVELOPMENT
ANN ARBOR, MICHIGAN

JOSEPH FREED &
ASSOCIATES, LLC

THE
MEIER
GROUP
Architects
P.C.





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P.L.L.C.