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Ann Arbor, MI 48103-9370

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April 7, 2008

City Council
City of Ann Arbor
100 N. Fifth Avenue
Ann Arbor, MI 48104

Re: Resolution to Approve Boulevard Heights Alley Vacation (Legislative File ID 08-0286)

Dear City Council of Ann Arbor,

Arbor-West Plaza LTD, a Michigan corporation locally owned by long-time Ann Arbor residents, is owner of property in the City of Ann Arbor commonly known as 2550 W. Stadium Boulevard (consisting of the addresses 2550, 2554, and 2558 W. Stadium Boulevard); lots 74, 75 Boulevard Heights which adjoins the City service drive/alley known as Boulevard Heights Alley.

As a part of the process of a (denied) petition to the Ann Arbor City Planning Department to vacate the Boulevard Heights Alley (the "alley"), there currently exists a resolution by the Ann Arbor City Council to vacate the alley. When the petition was originally proposed, an agent of Arbor-West signed a letter of agreement and support for this vacation, under the impression that Arbor-West was simply supporting the private property rights of a neighboring owner to redevelop their properties under one project that would fall across both sides of the alley while still allowing for access to the alley by the public, and by Arbor-West, its owners, agents, business tenants, customers, vendors, service companies, etc.

After Notice of Public Hearing had been served and we had the chance to read a more complete file regarding the alley vacation, we came to realize the true scope and nature of the petition and submitted a letter rescinding Arbor-West's earlier agreement to the action. **Arbor-West Plaza LTD, a current property owner abutting the Boulevard Heights Alley does not agree with and does not support the action to vacate the alley.**

The issue has been presented to the City Planning Commission (CPC) on three separate occasions. On Jan 18th of 2007, the CPC heard from both sides and decided to table the issue. On June 5th of 2007, the CPC gave a nod to both parties and approved the vacation as long as equal and continuing access was granted to the party opposing the vacation. By direction of the City Attorney, the CPC was later instructed to not attach conditions to the vacation. On Dec. 18th of 2007, the CPC rescinded its June 5th decision, and then the petition to vacate the alley without

conditions was ultimately denied. Now, on April 7th of 2008, the issue is being brought before the City Council for action.

Arbor-West feels very strongly that should the alley be vacated, the action will significantly devalue our property and cause us to suffer loss, and that the action will also adversely affect the three businesses located at Arbor-West Plaza and cause them to suffer loss.

Since the Planning and Development Services Staff Report (the "Report") provides reasoning in support of the vacation, we would like to respectfully mention a few counter-arguments in support of denying the action.

- The vacation of the alley should be approved without any conditions.
 - Curiously, despite the directive to not attach conditions to the alley vacation, the Report calls for a requirement that the alley vacation include that the City shall reserve all easements and rights-of-way to access the public utilities located in the alley. We do not fault the City for protecting its interests, but we hope to be allowed an attempt to protect ourselves as well.
- The decision to vacate the alley should only be based on whether it is being used for a public purpose.
 - To define "public purpose" as whether a City department uses the alley in a direct and active fashion (such as for the parking of fleet vehicles or a named public park) is too narrow a definition.

The alley serves many public purposes. It helps reduce curb cuts. It provides for inter-connectivity between the businesses on a commercial block. It relegates, out of public view, many of the unsightly, but necessary, functions of business such as service trucks, delivery trucks, utility hookups, and dumpsters and trash receptacles. This alley contains two public utilities in the form of an 18" storm sewer and an 8" sanitary sewer. There also exists the public-serving private utilities of DTE electrical lines, telephone lines, and Comcast equipment. The alley is also used by Ann Arbor Solid Waste dept. and the Waste Management Co. when servicing the commercial dumpsters.

-Furthermore, the overly-narrow definition means the same argument can be used to perhaps petition the closing all the alleys in the City, including those downtown, other City-owned easements, empty lots, green spaces, etc...

-Furthermore, the decision to vacate the alley should not be made on only whether it is being used for a public purpose (however defined), but with some consideration paid to the local effects, reasons, and consequences of the action. This petition action was brought to the Planning Commission and to the City Council neither by the City nor the public, but instead by a for-profit developer concerned for its own interests and not out of concern for whether the public uses the alley or not. Thus the decision to close the

alley should not be made in a vacuum, but instead as part of an overall plan of the Petitioner's project.

We must stress that there is no site plan associated with this petition. Since there is no project with the related petition, there is no need for the Council to take such strong proactive action and close the alley, based only on the petition to do so, for which there is no associated site plan to evaluate (even though the development project is continuously cited as a reason for supporting the alley vacation). This decision should only be considered as part of the developer's site plan. Otherwise, how can a decision-making body be comfortable with this? If you decide to vote 'yes', what are you basing it on? Ask yourselves the very important question, "What am I saying 'yes' to?" If the proposed project never comes to fruition why should the other property owners permanently lose the alley? The Petitioner is asking the Planning Commission and the City Council to commit themselves to a decision, without the Petitioner needing to commit *themselves* to anything.

- There is no requirement that any, or all, abutting property owners agree to the vacation.
 - Understood. However, this does not provide an argument for closing the alley.
 - Discontinuing the alley will help encourage redevelopment of the area.
 - This and other similar comments in the Report almost give the impression that the area can *only* be redeveloped if the alley is discontinued. Nothing could be further from the truth. Care must be taken to mention that though the alley blocks a proposed project in particular, it most certainly does not block redevelopment in general. If some portions of the block have not been kept up and have become decrepit in nature, it is from the willful actions of the property owners, and not because of the alley. New developers want to build on the Boulevard Heights block because it is a good location for business. But for this same reason, the various buildings and parcels should be highly desirable to various business owners or chains to conduct business there. Well, if this is so, then why haven't some of the current lot owners made more of an effort to sell or lease their land and buildings with the alley in place? Well they have, but at such a high price that there were no takers. So instead of dropping their sale or leasing prices to reflect market realities, they now seek to make it more attractive for a developer by offering, not more of their own assets, but by taking an asset (the alley) from the public and its utility from the other local property/business owners and selling it in a package deal as if the asset was their own to begin with.
- Of course, Arbor-West and the City should recognize the private property rights of the lot owners to redevelop their land, but these owner's private property rights to redevelop their lots do not extend to public lands (the alley) or to the value and rights (utility of the alley) that will be lost by other property owners.
- Alley vacation will pave the way for possible redevelopment.

- There is nothing stopping the redevelopment of the Petitioner's properties now. The alley only blocks the particular project proposed. There are many other options available for leasing, remodeling, and redevelopment.
- Discontinuing the alley will not cause a public or private nuisance or affect the welfare of same.
 - We feel that it will. All three businesses in our plaza use the alley every day. We have spoken to other businesses and occupants of the block who are also expressing concern about losing the alley's utility (as evidenced by the insistence that the alley remain open if the proposed development doesn't continue). The alley provides a very valuable and convenient alternate access route for delivery/service drivers and customers that visit the businesses in the block. It is very difficult for some directions of Stadium Blvd. and Jackson Rd.'s heavy traffic to enter the block at our location. The alley helps alleviate this problem by providing additional access points to the businesses for the customers, delivery, and service drivers, and so discontinuing the alley will very likely cause some measure of a public nuisance. The discontinuance of the alley will considerably lessen the value of our property. This loss is certainly a nuisance and loss of welfare to our company and the Plaza's three small businesses that will lose their daily use of the alley.
- The Petitioner holds options to redevelop six parcels of land on the block.
 - The owners of those properties are welcome to exercise their private property rights to clean up, fix, paint, lease, sell, and redevelop their land and buildings. We strongly encourage and welcome these lot owners to revitalize the block and increase the value of their properties, but not at the direct expense of the public and neighboring private property owners.
- The alley is unevenly graded and has some large potholes.
 - This might be a reason to fix the alley, but it is not a reason to take it away from the public and adjoining private property owners and give it away free to private developers. The potholes can be easily remedied and have not stopped the alley from being used by all the customers and service drivers over the past years, especially since not all drivers traverse the entire span of the alley, but only portions of it. Also, it is not uncommon for many alleys to be in some state of disrepair since they are low priority on public projects lists, and are not expected to handle high-speed traffic. It is also interesting to note that the condition of the alley is worst in the areas of those very same lots that some owners have willfully allowed to fall in disrepair, for which they now claim is a reason that the public land should be discontinued so as to be provided to a developer. Arbor-West, on the other hand, so greatly values the alley and the opportunity to conduct business in the City of Ann Arbor, that we, at our own cost and expense, graded, smoothed, and asphalted the entire 1600 sq. ft. (16' x 100') section of the alley abutting our property when we repaved our lot a few years ago.
- None of the parcels along the alley rely on the alley for access because all have frontage on other roads.

- This makes it sound like none of the parcels use the alley since they have some frontage access. It would be more accurate to say that none of parcels rely only on the alley for access. Any parcels relying only on the alley might have provided a reason that the alley *should not* have been taken away, but that none of the parcels rely only on the alley does not provide any reason that it *should* be taken away.
- The City's 'West Area Plan' supports commercial development and upgrades in this area.
- Commercial redevelopment, upgrades, and aesthetic improvements, can all be accomplished without vacating the alley. In fact, alleys are important infrastructural features that help support these very same types of developments and improvements.
- The alley is underutilized.
- We feel the alley is not underutilized. We are currently eliciting the help of residents and businesses on the block to help us inform the Planning Commission and the City Council that the alley is most definitely not underutilized, except perhaps by those property owners that have willfully allowed their properties to fall into disrepair, for which they now claim is a reason that the alley should be vacated and given to them to sell in a package to developers. The alley is most definitely being utilized by the other property owners and businesses on the block that are conducting business, providing a service, and creating value in the City of Ann Arbor every day.

Summary:

A close review of the Report will show that all the reasons offered for vacating the alley are reasons to continue not objecting to the action if a person were already inclined to think that way, but there are no strong arguments or reasons otherwise offered for vacating the alley. The only one that comes close is the City's desire to see the area redeveloped, but with all the parcels being of good size and location, achieving this goal is highly feasible without vacating the alley and causing loss for others. As we've already mentioned, the alley would service the businesses of such a redevelopment on the block just as it is currently serving seven (7) existing and operational businesses and one residential income house.

Prices reflect all known information and risk assessments in free markets. When a transaction fails to materialize in real estate, it usually means only one thing; that with all the factors in consideration, the price asked is too high. From this point, there are two ways to increase value for the other party and help facilitate a transaction; lower your price for the same product, or offer more product for the same price. The Petitioner-associated property owner's earlier attempts to lease and redevelop their parcels did not include lowering prices to reflect market realities. Thus in order to protect the price (or even increase it), an effort is being made to offer more value via more product. But, alas, the parcel owners are not offering more of *their own* product, but instead have devised a way to obtain, without compensation for loss, additional product from two outside sources, a.) tangible land from the public, and b.) intangible rights, value, and utility from the other private property owners and businesses that use the alley.

It is true that the Arbor-West property has two curb cuts, but it should be noted that they serve the same traffic flow and so they often serve as one unique access point rather than two. The traffic pattern and congestion at the Maple/Jackson intersection is such that only northbound traffic is able to turn into the plaza during business hours. Southbound traffic is not able to turn into the plaza, nor can east and west bound traffic since they must head southbound before attempting to access the plaza. It may be said that all real estate locations have their plusses and minuses and that Arbor-West should limit itself to working with what we have. But that is exactly what we are doing. Similarly, the Petitioner-associated property owners should be expected to limit themselves to working with what they have as well. We are not asking for the City for more, we are simply asking that the City not take anything away from us.

If, without vacating the alley, the Petitioner's current assemblage of parcels do not provide for the most efficient land use for redevelopment, then that is something the property owners must contend with and is not the City's responsibility to remedy. The real issue is that the Petitioner-associated property owners have set their sights on an unreasonable project proposal considering the inherent limitations of their parcels. But all is not lost. There are still many viable options available for these property owners to derive value from their land.

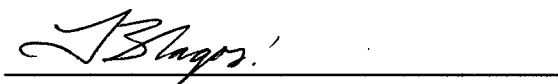
It may be said that it is part of the City's duty to provide additional value to the land of private property owners via efforts such as traffic management, public utilities management, zoning, law enforcement, and so on. It should not, however, be within the scope of the City's duty to increase the value of private property by proactively liquidating adjoining public land that is valued by others so that the original parcels will be more lucrative to big out-of-town developers coming in to run roughshod over local businesses.

Arbor-West owners and its tenant businesses have made significant investments in this Ann Arbor location with the expectation that the alley, an important (though unglamorous) infrastructural feature for commerce, would always remain.

Arbor-West is not a single coffeehouse as mentioned in the Report. It is a small plaza containing three small businesses; Focus Photo, Quiznos Sub, and Portofino Coffee, that utilize the alley on a daily basis. These locally-owned businesses, tenants of the adjoining property owner, will suffer a loss if the alley is vacated. Arbor-West, the adjoining property owner will suffer a loss if the alley is vacated.

We ask the City Council to deny the Petitioner's request to vacate the Boulevard Heights Alley.

Arbor-West Plaza LTD



Basile J. Lagos
Arbor-West Plaza