May 29, 2009

To: City of Madison Plan Commission

This statement is submitted by the Board of Directors of the Highlands Community Association, Inc. in opposition to the proposed lot division at 6234 S. Highlands Avenue.

A. Introduction and public response

As contemplated by the Plan Commission deferral of April 6, 2009, discussion has been held with the Alderman, both by the Greenwalds and the Association, and other interested persons. The Greenwalds stated they sent an E-mail to essentially all the addresses listed in the Highlands Directory, in which they announced a meeting to be held by them on May 26, 2009, at 6234 Highlands Avenue.

The Association Board had not earlier communicated directed with the entirety of the neighborhood, but did so by E-mail in response to the E-mail sent by the Greenwalds, in order to express the position the Association Board of Directors has taken. The Association E-mail did not solicit a response, nor did it solicit statements in support. However, after the two E-mails, and after the Greenwalds' public meeting on May 26, 2009, I have received thirteen E mail responses from Highlands residents who had not previously stated any position on the matter. All of the responses oppose this lot division. Of the thirteen, four sent copies of their responses to the Plan Commission. A fifth person provided a letter of opposition which the author asked me to submit to you. A copy of that letter is provided by Email with this statement. There are about 96 street addresses in the Highlands directory, although a few of them may not list E-mail addresses.

B. Not consistent with the character of the neighborhood, not in the public interest.

This response from the public, as well as the Board's own continued review, reinforces the view of the Association that this lot Division should not be granted. As a reminder, the Plan Commission is required both to determine that the requirements of R1R are met, and also to determine that the proposal is in the public interest, as required by the conditional use standards, made applicable through the deep lot provision of the Code. This application does not meet that test, as measured by the public most affected: that is, the neighborhood, both as individuals, and as a neighborhood association. Nor does the proposal meet the broader public interest.

(1) While there are other properties in the neighborhood that apparently used the deep lot provisions to create new lots prior to application of the R1R zone, they were for the most part designed to ensure privacy for each home, and

maintain the wooded character. This is the first such subdivision since application of the R1R zone, and whether it complies with the purpose of the R1R zone must be considered. Further, this decision will set precedent for future deep lot subdivisions in the neighborhood. After viewing the property from the road and, upon invitation by the property owners, on the site, one can only conclude that a new house, no matter how well-designed and landscaped, will inevitably appear to have been plopped into the front yard of the rear house. The extensive landscaping sweeping down the hill to the west from the west-facing existing house is unlike any other circumstance in the neighborhood.

(2) The tree plan submitted by the applicant at the suggestion of a member of the Commission does not preserve trees.

At least one member of the Plan Commission had expressed an interest in a tree preservation plan. The document which the applicants submitted titled "tree preservation plan" lists and locates a number of trees and states that these are trees, "the owners wish to preserve as long as they do not conflict with future improvements to the lot." Such declaration is no plan, and no assurance, at all. Moreover, the plan does not identify any trees which are within the building setback line. And there are only five trees – numbered 4, 5, 6, 17, and 18 - between the building site and the road. (In contrast, the undersigned counted fifteen trees along the front of 1006 Willow Lane, this morning.) The forest to be preserved at 6234 S. Highlands is within the building site. Thus, even if the statement of conditional intent in the "tree preservation plan" was written as a commitment, the bulk of the forest would cease to exist along S. Highlands avenue. Mr. Link observes in his E-mail to you that in order to build a 1200 square foot house, four "magnificent oaks" would in his opinion have to be cut down. The tree preservation plan is in fact a blue print to change the front yard of 6234 S. Highlands from a forested area, to a non-forested area with a thin screen. Even that thin screen would exist, if, but only if, it does "not conflict with future improvements to the lot." As if to confirm this intention to reduce the forest to at best a thin screen, the applicant Greenwalds have submitted photographs of other houses – rather pointedly including six board member houses, which do not have forested front yards. But the photographed lots are not subject to the deep lot provision of the Code, which requires that there be a finding that a development is in the public interest. Thus when the applicant appeals to those houses as the proper standard, the applicant is attempting to avoid the strictures of the deep lot provision of the Code, so as to be compared to existing houses selected by the applicants which are not subject to that provision of the Code.

It is most certainly true that there have been subdivisions in the Highlands, including one recently- within the last few years- at 5901 S. Highlands, to which the neighborhood did not object. This neighborhood has not been one to oppose development, tear downs, and reasonable divisions. Drive or better still, walk, or bike, through it. Such are everywhere. This proposed division does not fit, and poses a threat to the character of the neighborhood, however, and should not be granted.

(3) The setbacks and lot sizes provided by R1R zoning, which the neighborhood still supports, constitute one of the guardians of the character of this unique neighborhood. The uniqueness of this neighborhood is itself an affirmative public interest of the city as a whole. The present tenants of the Highlands may be, indeed we are, mostly a mundane lot, but the historic genesis, and many of the former residents, and residences, have significance for the city as a whole. (Such as the Davis house, now an artists' retreat, the Link house, home of the inventor of WARFrin, the Ronald Mattox house at the top of the big lawn, the Brittingham house, to name four). The present and still nearly new Greenwald residence is a great addition to the neighborhood. Whatever happens, it will be known in the neighborhood not as 6234 S., but as the Greenwald house - we hope proud company with Mattox, Link, Davis, and Brittingham. We regret indeed whatever circumstances have occurred to have caused Greenwalds to want or need to change it, but such was the company into which it was originally introduced.

(4) Assuming that it is to the applicants' private interest or need to change it, the deep lot provision of the Code is the other guardian of the character of this unique neighborhood. And that guardianship is intended to assure that development of deep lots will not result in the appearance of a house planted on a front lawn. The applicants like to present the as yet un-designed and un-located house as "nestled", a charming word. "Nestle" of course suggests minimal invasion; but any house built will destroy trees and the character of that lot, and that part of the neighborhood. A pejorative, but more realistic description, would be to analogize with Dorothy's house, dropped from the sky. The forested character will be flattened, at best a thin screen might remain.

(5) The deferral period has not resulted in any alleviation of the concern that drainage problems, already a problem on this lot in the past, will be aggravated for the immediate neighbors, and downstream to the lakes, by a further building.

(6) Thus if the Commission chooses to grant this division, applying the conditional use standards, it would be doing so over the spontaneous and fairly uniform voice of a neighborhood not used to internal wrangles.

C. Thirty foot requirement.

Planning staff has stated that the proposed division meets the thirty feet of "unobstructed access" requirement. We respectfully disagree. We understand the likelihood that the Plan Commission will not exercise its independent judgment over the views of its staff. We urge you to do so, however. Alternatively we urge you to seek a legal interpretation from the city attorney. The words in question are words in a law, and thus assertions based on lay views may not produce the correct result. While plan staff may have stated that their interpretation has been used in the past, no actual instance of such interpretation has been presented, and we suggest staff are in fact only doing the best they can as planning professionals to recall or infer what "must" have been the interpretation in the past.

In any case, here is the Association's view of the 30 foot argument, restated.

1. The Code language itself.

(a). The Code language does not say that the rear parcel must merely abut the street for 30 feet. The Code language also does not saymerely that there can be no intervening conflicting ownership of land. Both of those things are easily stated. If such was the intent such would have been stated.

(b). The language of the Code in fact states the rear lot must have "access" to the street. "Access" is not "abut".

(c). The language states that the "access" must be through an "unobstructed strip of land". It is required that this strip of land will also be owned by the rear lot. If the strip of land is owned by the rear lot, and it provides "access" and is "unobstructed", then the owners, the police, the fire department, guests, whatever, can get to the back lot, and if for any reason the city needs to have access, it may do so as well. If the rear lot owns unobstructed access, there is no need for any driveway agreement with any other parcel. There is also no need for any other access agreement, because the rear lot owns the strip and has unobstructed access and thus the rear landowner can create a driveway, or the city can otherwise make the rear lot owner do so, should they choose to.

If mere ownership of the 30 feet was required, there is no reason to insert the words "access" and "unobstructed." The two words are inserted, and a sense of why they are inserted can be gleaned from the exception to the rear lot ownership requirement.

2. The exception to the 30 foot rear lot ownership requirement helps in the interpretation of the meaning of "access" and "unobstructed".

(a). The fact that the Greenwalds agreed with themselves to put a driveway "agreement" in place in a different spot outside the 30 feet may misdirect focus from the intent of the 30 foot requirement. If the Greenwalds can agree on a driveway agreement with themselves, they can also rescind that agreement by themselves (as could the future owners, even if they are different persons.) Moreover, in the event of some claimed breach of that driveway agreement, litigation could in effect make it null and void, or ineffective. It is a private agreement. And thus any meaningful access to the rear lot is not assured to the rear lot. But with the Association's interpretation of the deep lot provision of the Code, the nonexistence, breach, or demise of the separate driveway agreement would not matter one whit - precisely because the Code requires "unobstructed" "access" to the street owned by the rear lot. Thus the rear lot could control viable access, without consulting other owners, and without relying on other owners not to park in the driveway as the fire truck arrives.

(b). An exception to the requirement of "unobstructed" rear lot ownership and "access" is permitted by the deep lot provision of the Code if:

a. The driveway is in the thirty feet. Notice how important this is! If the rear lot owns an unobstructed thirty feet of access, the City need not care whether the present driveway is in the 30 feet, because the rear lot has power to create other access!]

e. The developer has to designate the 30 feet as a fire lane - that is, a public interest in indefeasible public access.

Under the Association interpretation, if the rear lot has 30 feet of "unobstructed" "access" already, there is no need for a further expression of the public access right as expressed when the rear lot does not own the strip with unobstructed access. Such potential and actual public access right exists by definition.

Thus the existence of the specific requirements if the rear lot does <u>not</u> own and control the strip shows just the sorts of things which are not needed, if the rear lot <u>does</u> own and control the strip without "obstruction", and can thus provide access to it by means necessary to the rear lot owner's safety, and the public safety, without consulting any other owner.

(c). Staff has stated that the recorded agreement with the neighbors, the Lakes, is not an obstruction because it is a private obstruction. That is, on its face, illogical. An obstruction is an obstruction. If the Code meant public obstruction, it would say, public obstruction. Moreover, the driveway agreement is also a private agreement, and is thus not a public agreement. Staff has also pointed

out that the rear lot owns 34 feet, albeit 25 of those feet are obstructed. Staff then states that the owner of the rear lot could build a nine foot driveway. And staff has stated they presently only require eight feet for a driveway. But by this interpretation, staff is changing the Code from the expressly stated thirty feet, to eight feet, and staff may not amend Code.

D. Additional Conditions which should be mandated.

While we maintain the proposed subdivision does not comply with the deep lot provisions of the Code, and this privilege should not be granted, should the Commission chose to approve the proposal, we believe that at the very least, a series of additional conditions should be applied. The property owners have indicated their intent to build a new home for themselves on the new lot, but circumstances do change, and the lot could be sold before or after home construction. In addition to the conditions of approval recommended by staff, we recommend three conditions.

1) As proposed new Lot 1 is constrained by topography and the existing pool and deck, the CSM should clearly define the maximum building envelope within the required building setbacks of the R1R zone to ensure the public including potential future buyers are aware of the limitations of the site. We recommend the following condition of approval

The CSM must clearly delineate the allowable building envelope in compliance with the building setback requirements of the R1R zone.

2) The stated purpose of the R1R zone is "to stabilize and protect the essential characteristics of certain low density residential neighborhoods which are heavily wooded and which provide a quiet, park-like setting to display numerous historic buildings and plantings, and thereby preserving the natural beauty and landscape plan, insofar as possible." The Highlands was designed in 1911 by landscape architect Ossian Cole Simonds, a follower of Frederick Law Olmsted's techniques of incorporating the natural topography and native plants and trees into the building environment. The northwest corner of the Highlands where this subdivision is proposed is one of the most heavily wooded areas in the neighborhood, and maintaining this wooded character is integral to upholding the purpose of the R1R zone. The property owners have prepared a tree preservation plan for the new Lot 1, and while its terms do not offer adequate protection, if our objections are overruled, and we recommend the following condition of approval, converting the statement of intent into a binding declaration:

Compliance with the May, 2009 Tree Preservation Plan prepared by Majestyk Tree Care is required, but to include the requirement that the numbered trees as shown on the copy of the survey map prepared by Majestyk will all be maintained, regardless of construction of a residence.

3) The April 1, 2009 staff report, page 3, states that the pool and deck, located within proposed new Lot 1, "will need to be removed prior to recording of the CSM, since the pool is considered accessory to the residence, which will located on a separate parcel." The property owners now indicate they intend to build a new home for themselves adjacent to the pool and deck on new Lot 1. However, if the property owners should choose to sell Lot 1, the stand-alone accessory use will be perpetuated. Therefore, we recommend the following condition of approval:

Within one year of recording of the CSM, if a building permit for a new principal structure on Lot 1 has not been filed, the applicant shall receive the necessary permit to remove or enclose the pool and deck, and shall complete said removal or enclosure.

Respectfully Submitted by the Board of Directors of the Highlands Community Association, Inc.

Board of Directors, by Jack D. Walker, President.

Murphy, Brad

From: Ethington, Ruth
Sent: Friday, May 29, 2009 2:12 PM
To: Doug Pearson; Eric Sundquist; James Boll; Judy Bowser; Judy Olson; Kerr, Julia; Cnare, Lauren; Michael Basford; Michael Heifetz ; Nan Fey; Schumacher, Michael; Timothy Gruber
Cc: Murphy, Brad; Parks, Timothy
Subject: FW: Greenwald Proposed Subdivision of 6234 S Highlands Ave.

2 Late comments…one email below, one attached

From: thomaslink@aol.com [mailto:thomaslink@aol.com]
Sent: Wednesday, May 27, 2009 11:03 PM
To: Murphy, Brad
Subject: Greenwald Proposed Subdivision of 6234 S Highlands Ave.

5/27/09

Dear Members of Madison Planning Commission:

I am out of town the first week June or I would address you directly.

I strongly oppose the proposed subdivision. It is not only out of character with the neighborhood, but will adversely effect the aesthetics of the existing landscaping that has already been created by the Greenwald's in the front yard of their beautiful trophy house.

Because of the limited size (.64 acre) of the front lot with the required (50/40/30 foot) setbacks and the Greenwald's determination to keep the existing pool, they would have to cut down at least four magnificent oaks to the West of the pool, to build a 1200 square foot house. In my opinion, they are the best trees on the property.
This conflicts with all the talk of tree preservation.

Kindly respect the overwhelming desire of the neighbors and the Highlands Association leadership and deny this proposed subdivision.

Respectfully Submitted,

Thomas Link
1111 Willow Lane
Madison. WI

Susan B. King
6217 North Highlands Ave.
Madison, WI 53705
608.231.2523

Madison Plan Commission
215 Martin Luther King Blvd.
Madison, WI 53701

Re: 6234 South Highlands CSM

Dear Commissioners:

I am writing to support the CSM deep lot request made by Roger and Nancy Greenwald. In the 1980's, when the R1-R Rustic Residence District was established, I was on the Plan Commission. I voted for adoption of the new zoning category. Years later, my husband and I bought a lot in the Highlands. Provisions of the R1-R category and the Highlands' wooded character made it possible to build in an existing neighborhood an architecturally distinctive house, without needing a rural, multi-acre lot.

The existing Greenwald house is an excellent example of a new residence that looks as if it may have been part of the original historic Highlands. It looks timeless and there is every reason to expect that the new, smaller house to be designed by the same architect will also look "historic", as if it's always been there.

I wish to comment on the requirement that the rear lot have access to the street by a strip of land, thus preventing the rear lot from being landlocked. The proposed 30' corridor should continue to have trees on it. To insist that any trees on it be cleared so that it is "unobstructed" would be inconsistent with the importance this neighborhood places on its mature trees. Similarly, to argue that access to the rear lot should occur within that 30' corridor would be to require an additional road. This would be particularly unfortunate and not in the interest of the neighbors or the public.

I speak from experience. We were unable to acquire a shared driveway easement with the then-owner of the lot behind our property. The result is two parallel lanes of asphalt within six feet of each other. This both confuses visitors and adds to the water runoff from a steep hill. These dual roads can be viewed at: http://maps.google.com/maps?sourceid=navclient&rlz=1T4ADBR_enUS302US302&q=6220+North+Highlands+Ave,+Madison+Wi&um=1&ie=UTF-8&split=0&gl=us&ei=CrUeSubzN4rSMKrbgfUF&sa=X&oi=geocode_result&ct=image&resnum=1

Finally, I have reviewed the Greenwald's principles proposed for landscaping the new lot. They are consistent with the recommendations of the landscape restoration plan prepared for the Highlands Neighborhood Association. I co-chaired that Landscape Committee.

Very truly yours,

Susan B. King

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