

November 2, 2023

City of Detroit
Historic District Commission
2 Woodward Ave., Ste. 808
Detroit, MI 48226
HDC@detroitmi.gov

**Re: Schaap Center
Historic District Commission (HDC) Application**

Dear Members of the Historic District Commission:

I am writing on behalf of my client, Urban Renewal Initiative Foundation and its successor and assignee the Schaap Center (collectively “URIF”) which, as you know, owns the property located at 14927 E. Jefferson Ave., Grosse Pointe Park, Michigan (the “Property”) and includes the abandoned non-historic DPW Building and related structures situated on the Property (referenced in URIF’s application as Bldg 101, the “DPW building”). As you also know, the DPW building is part of and subject to the terms of a legally binding Memorandum of Understanding (“MOU”) between the city of Detroit, the city of Grosse Pointe Park (“GPP”), and URIF for the construction of the state-of-the-art and non-profit Schaap Center, also known as The A. Paul and Carol C. Schaap Center for the Performing Arts and the Richard and Jane Manoogian Art Gallery (collectively, the “Schaap Center”). Not only does the MOU address the overall development, location, and actual design of the Schaap Center, but it describes other attributes of the cooperation between Detroit, GPP and URIF for a revitalization of the area, including a new bus turnaround, and parking area for DDOT busses, which significantly benefit all of the Parties, including the residents of the City of Detroit. Since the MOU was executed in 2019, the Parties have proceeded in good faith by taking affirmative actions as required by the MOU, including: (i) the Detroit City Council authorizing by resolution the sale and conveyance of property to URIF; (ii) GPP performing and satisfying its obligations under Section 4 of the MOU; (iii) GPP and the City of Detroit executing a binding Memorandum of Understanding for the reopening of Kercheval Avenue to two-way traffic; (iv) URIF purchasing, and the City of Detroit conveying title to property for \$300,000; and (v) Paul and Carol Schaap investing approximately \$10MM to date to fund the continued construction of the Schaap Center. Outside donors have also invested over \$7MM in additional funds for the completion of this project and the only item remaining for URIF and the City of Detroit to satisfy their obligations under the binding MOU is for URIF to complete, and the HDC to permit, the demolition and construction activities planned on the Property.

While URIF maintains that the MOU is binding on the City and all political subdivisions thereof including, without limitation, the Historic District Commission (“HDC”), this letter is to address

and help guide the HDC's review of URIF's application for a Notice to Proceed ("NTP"), which is currently set to be heard by the HDC on November 8, 2023. URIF respectfully submits that, under the circumstances set forth below, the HDC should issue the NTP in this case.

A. NTP Under Section 21-2-75

As recently recognized by the Michigan Court of Appeals in *Lehman Invest Co, LLC v City of Village of Clarkston*, 2023 WL 4311993 (Mich Ct App, August 17, 2023), proposed construction activities that will result in the demolition of a resource – including, as the case is here, a non-contributing resource – located within a historic district require the issuance of a NTP. Specifically, in this case, the HDC's review and determination are governed by Section 21-2-75 of the Detroit City Ordinance, which provides, in relevant part, that URIF's planned demolition of the DPW building and related structures (e.g., the abandoned salt shed) “*shall be permitted by the [HDC] through the issuance of a [NTP] if **any** of the following conditions prevail and if the [HDC] finds that the work is necessary to substantially improve or correct any of these conditions:*

- (1) The resource constitutes a hazard to the safety of the public or the occupants;
- (2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community;
- (3) Retention of the resource would cause under financial hardship to the owner[.]
- (4) Retention of the resource would not be in the interest of the majority of the community.

Ordinance, Section 21-2-75(1)-(4) (emphasis added). Essentially, this Ordinance section creates a two-prong test for issuing a NTP: An applicant is entitled to a NTP if (i) **any** of the above conditions are present; and (ii) the proposed work is necessary to substantially improve or correct any of those conditions. This is critical as, in the past, the URIF received feedback, after the MOU was executed, that expressed design and aesthetic concerns over the proposed development, including in which direction the building should face. The Ordinance, however, does not allow for such consideration in a NTP, and any such changes would be contrary to the Parties' MOU. Put simply, if URIF were to make such deviations from what the Parties agreed to in the MOU, it would be breaching the Parties' MOU. Importantly, the only consideration for issuance of a NTP under Section 21-2-75 are the four alternative conditions set forth therein.

As explained below, URIF respectfully submits that all four of the above conditions are present and that the planned demolition and construction as shown in the Site Plan are necessary to substantially improve or correct those conditions. Moreover, we assume the city of Detroit in approving the MOU understood and agreed that the contemplated actions by URIF were a significant public benefit to the residents of the District and the City, and that there was no useful

purpose to retaining the dilapidated structures on the site or not proceeding with the construction of the parking area. Accordingly, we respectfully submit that that the HDC should grant URIF's application and issue the requested NTP.

1. The DPW building constitutes a hazard to the safety of the public.

As previously submitted, URIF has commissioned the professional opinion of Mr. John Sweda, PE, a licensed structural engineer, to review the Property and to report on its condition and structural integrity. Mr. Sweda personally inspected and reviewed the Property and determined that it is "unsound, unsafe [and] dangerous" and that it presents "an immediate danger and safety hazard" due to the structural deficiencies described in his written report. A copy of Mr. Sweda's report is attached to URIF's application as "Structural Engineer Report."

Also, in addition to its rapidly deteriorating state, the DPW building is vacant and constitutes an attractive and dangerous nuisance which has been the site of pervasive lewd and criminal activities such as vandalism, drug use, and other immoral acts. And while the City has suggested that these conditions may be addressed through certain temporary measures such as structural bracing and perimeter fencing, such measures are patently inadequate to improve or correct the dangerous condition presented by the DWP building laying vacant and unused. Rather, the only reasonable corrective measure is to demolish the building and replace it as called for in the binding MOU.

Perhaps more importantly, the City and URIF always understood that the DPW building would be demolished as part of the development of the area and consistent with the terms of the MOU. The Parties clearly understood that there would be great benefit to the community through revitalizing the area; the demolition of the building was always part of that plan.

2. The DPW building is a deterrent to a major improvement program.

Perhaps the strongest case for issuing the NTP in this matter lies in Section 21-2-75(2) as the abandoned DPW building is clearly a "deterrent to a major improvement program that will be of a substantial benefit to the community."

There should be no doubt that the Schaap Center qualifies as a "major improvement program that will be of a substantial benefit to the community." URIF seeks, and has already obtained the approval and consent of the City of Detroit, Office of the Mayor, and Detroit City Council (unanimously approved), to take a dangerous, dilapidated, and abandoned property and replace it with the state-of-the art Schaap Center which includes both a performing arts studio and art gallery. Not only will this project remove a condition that is a clear and present danger and detriment to the community, but it will also replace that condition with a new public resource that will improve local property values, provide new and unique educational opportunities to community residents, and decrease criminal activity in the Jefferson-Chalmers neighborhood.

Indeed, as set forth in the binding MOU – signed by the City of Detroit Director of Planning and Development, the Detroit City Finance Director, Detroit Corporation Counsel, and approved by Mayor Duggan and the Detroit City Council – both the City of Grosse Point Park and Detroit “believe that the construction and operation of a non-profit community center for the arts, bus turnaround and parking area [are] in the best interest of the public and are desirous of seeking necessary approvals and consummation of the same.” *See* (MOU, p. 1).

There should also no doubt that the current DPW building and related structures are a “deterrent” to this major improvement program and that demolition is necessary to substantially improve or correct that condition. Specifically, the binding MOU requires URIF to construct the Schaap Center in “substantial compliance” with the Site Plan which is attached as Exhibit C to the MOU. That site plan provides that parking for the Schaap Center must be constructed on the land currently occupied by the DPW building which necessarily involves and requires demolition and removal. URIF cannot comply with the MOU, and therefore cannot move forward with the substantial improvement program, unless or until it is permitted to remove the DPW building and related structures.

Accordingly, demolition and removal of the DPW building is necessary to proceed with a major improvement program (*i.e.*, the Schaap Center) and the HDC must, therefore, issue the requested NTP.

3. Retention of the DPW building would cause undue financial hardship to the owner.

As noted above, the binding MOU requires URIF to “Position and Construct” the Schaap Center in “Substantial Compliance” with the Site Plan attached as Exhibit C to the MOU.

Pursuant to the binding MOU, the land occupied by the DPW building and related structures must be used to construct parking for the Schaap Center in accordance with the MOU. Thus, other development opportunities, uses, or even design changes are not possible without substantial breach of the MOU and attendant liability to URIF. URIF also purchased the Property from the City of Detroit for \$300,000 under the condition that it be used to construct the Schaap Center exactly as agreed to in the MOU and has invested, with the help of multiple donors, over \$17MM to improving the Property with the Schaap Center.

Accordingly, retention of the DPW building would undoubtedly cause undue financial hardship to URIF because, in addition to losing the \$300,000 purchase price for the property and the \$17MM in donations specifically given to help fund the Schaap Center’s construction, it will be forced to maintain an abandoned and valueless building and associated land and to materially breach the MOU by failing to move forward with planned demolition and construction.

4. Retention of the DPW building would not be in the interest of the majority of the community.

The final element bearing upon whether the HDC should issue a NTP in this case is whether retention of the DPW building and associated land would not be in the interest of the majority of the community. As noted, the DPW building is abandoned and in poor condition. It is not being used by the City or any of the local residents and it stands in the way of a major improvement program that will, without doubt, improve the specific site and the neighborhood generally. The benefit to the majority of the community should be obvious, however, to dispel all doubts, URIF has included in its application supporting letters from residents, program partners, and local business owners who live and operate near the development. See (Application at Exhibit A).

B. NTP Under Section 21-2-78

Finally, regarding the planned Site Plan improvements on the Property including the construction and location of a bus turnaround and DDOT bus parking area, the HDC should also issue a NTP under Section 21-2-78 which provides, in relevant part, that the project may be granted a NTP if “the proposed work will be inappropriate according to the Secretary’s standards and the defined elements of design for the historic district, but is without substantial detriment to the public welfare and without substantial derogation from the intents and purposes of this article, and where one or more of the conditions of Section 21-2-75 of this Code have been met.”

As set forth in detail above, URIF submits that all of the conditions of Section 21-2-75 have been met in this case. Thus, the only remaining considerations are whether the planned improvements to the Property are (i) without substantial detriment to the public welfare; and (ii) without substantial derogation from the intents and purposes of Chapter 21, Article II (Historic Districts and Landmarks) of the Detroit City Ordinance.

The public welfare in this case should not be in question as URIF is taking an abandoned, dangerous, and non-contributing building and land that have no historical or aesthetic value and which are a detriment to the public welfare, and replacing them with a new public resource that will substantially improve the community, decrease crime, improve property values, and breathe new life into a property that has long been a symbol of blight and decay. There will be no “substantial detriment” to the public welfare in this case, but rather, an undeniable substantial benefit.

The planned improvements are also consistent with the intents and purposes of Chapter 21, Article II as called for in Section 21-2-78(a)(2). Specifically, Ordinance Section 21-2-1 provides that the purposes of Article II are to:

- (1) Safeguard the heritage of the City by preserving areas in the City which reflect elements of its cultural, social, spiritual, economic, political, engineering, or architectural history or its archeology;

- (2) Stabilize and improve property values in each historic district and the surrounding areas;
- (3) Foster civil beauty and community pride; and
- (4) Promote the use of historic districts for the education, pleasure, and welfare of the People of the City, the State, and the United States of America.

There can be no reasonable dispute that the Schaap Center and the planned improvements to the Property do not “substantially derogate” from the above intents and purposes. The planned improvements on the Property are necessarily tied (and legally required under the binding MOU) to the overall construction of the Schaap Center and there is no doubt that the introduction of a new public performing arts studio and art gallery will improve property values, foster civic beauty and community pride, strengthen the local economy, and promote education, pleasure and welfare within the Jefferson-Chalmers neighborhood and Detroit communities; especially when compared to the abandoned and non-historic DPW building. See (Ordinance, Section 21-2-1(2)-(5)). There will also be no adverse effect on the existing heritage of the City as the DPW building and associated land are non-contributing resources within the Historic District that are completely devoid of any cultural, social, spiritual, economic, political, engineering, or historical significance. Even when in use, the DPW building was nothing more than a non-historical piece of municipal infrastructure which is now planned to be replaced with something that will introduce new cultural, social, and educational opportunities and architectural history where none previously existed.

Accordingly, and in summary, all evidence supports the inevitable conclusion that issuing the NTP and allowing URIF to move forward with constructing the Schaap Center is in the interest of the majority of the community.

For these reasons, URIF respectfully submits that the HDC should issue a NTP in this case as all of the requisite elements as set forth in Ordinance Sections 21-2-75, and 21-2-78 have been met.

This letter is also submitted without waiver, and with full reservation of rights, of all claims, defenses, and counterclaims at issue in the related matter of *City of Detroit v. Urban Renewal Initiative Foundation*, Wayne County Circuit Court Case No. 2023-004376-CH.

Very truly yours,



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