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May 20, 2019

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Re: Additional Information and Clarification by TCGIS in Response to Councilmember Questions at the May 15, 2019 Public Hearing

Dear City Councilmembers:

Following the presentations by the TCGIS and Save Historic St. Andrews, several City Councilmembers asked questions about the process of historic designation and related legal questions. The purpose of this letter is to respond to the Councilmembers' questions.

The Ownership of the Former St. Andrew Property

The owner of the former St. Andrew Campus is a private Minnesota, non-profit corporation, the Twin Cities German Immersion School Building Company ("Building Company"). The Building Company leases the former St. Andrew Church campus to TCGIS. TCGIS is a public school. Under current Minnesota law, charter schools are not allowed to own the real estate in which they conduct their classroom programs. Instead, the Building Company is the owner and landlord and TCGIS is the tenant. TCGIS pays rent to the Building Company, in order that the Building Company can make the required payments to the bondholders who purchased the Conduit Revenue Bonds issued by the City of Saint Paul HRA. Thus, the former St. Andrew Church building is not a "public" building; instead, the real estate is owned by a private corporation.



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The City Council has not Previously Designated an Individual Site for Heritage Preservation Over an Owner’s Objection

During the discussion by Saint Paul City Councilmembers, Councilmember Prince correctly noted that in some of the designated historic districts in Saint Paul, not all of the owners consented to the designation. The rules for designating historic districts are different than the rules for designating individual properties. For instance, when designating a historic district for inclusion on the National Register of Historic Properties, the Federal regulations require that a majority of the affected property owners consent to the designation. Examples are the Historic Hill District and West Summit Avenue Historic District. However, when the issue is the designation of an individual property, the owner of the property must consent to its inclusion for it to be listed on the National Register. No private property, regardless of its significance, can be individually included on the National Register without its owner’s consent. As previously noted, the Building Company, the current owner of the former St. Andrew Church building, does not consent to the property being placed on the National Register or being listed for heritage preservation under Chapter 73 of the Saint Paul City Code.

Historic Designation of Private Property Can Create Potential Governmental Liability

Several Councilmembers asked whether historic designation of private properties can lead to “eminent domain” or a “taking.” Ms. Boulware responded by referring to the 1960s case of *Penn Central v. New York*, [438 U.S. 104 (1978)], and seemed to suggest that potential liability should not be of concern to the Council. The two leading cases in Minnesota on possible governmental liability in a historic designation context are *Powderly v. Erickson*, 285 N.W.2d 84 (Minn. 1979) and 301 N.W.2d 324 (Minn. 1981). Citations from these cases are set forth on pages 8 and 9 of my May 10, 2019 letter. The Saint Paul City Attorney is perhaps in the best position to advise the City Council on this topic.

Very truly yours,

Marc J Manderscheid
On Behalf of the Twin Cities German
Immersion School and the Twin Cities
German Immersion School Building
Company

MJM/npw
cc: Peter Warner, Assistant City Attorney