

September 28, 2020

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Commissioner Robert Kirchdorfer
Commissioner David Morgan
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Commissioner Ashlyn Ackerman
Commissioner Christopher Fuller

Louisville Historic Landmarks & Preservation Districts Commission
c/o Cynthia Elmore, Louisville Metro Planning & Design Services
444 S. Fifth St., Suite 300
Louisville, KY 40202

Re: 20LANDMARK0003 - Landmark Petition for 100 Distillery Commons Dr.

Dear Commissioners:

Please allow this letter to serve as the formal objection of Barrel House Investments LLC (“Barrel House”), owner of the property located at 100 Distillery Commons Dr. (the “Property”), to the Landmarks Petition filed by the Irish Hill Neighborhood Association (the “Petitioner”) for the Nelson Distillery Warehouse structure located on the Property (the “Petition”). Barrel House objects to the Petition because the Petitioner failed to submit the “verified signatures and addresses of no fewer than 200 residents of Louisville Metro” as required by Louisville Metro Ordinance (“LMCO”) § 32.260(I), the provision of the Louisville Metro Landmarks Ordinance (§ 32.250 *et seq.*, the “Landmarks Ordinance”) governing Individual Landmark Petitions.

On its face, the Petition contains only 36 handwritten signatures and addresses; the other 215 names and addresses are not accompanied by any signatures, but rather are presented in a spreadsheet printout of data apparently submitted through a form on a website maintained by the Petitioner. The Petitioner’s cover letter to Cynthia Johnson Elmore, Louisville Metro’s Historic Preservation Officer, states that “Given Covid-19 restrictions issued by the state of Kentucky, electronic petitions have been permitted by your office for this submittal.” When I sought clarification about this statement from Ms. Elmore and the County Attorney’s Office, Travis Fiechter, Assistant County Attorney, responded that the office had been approached by staff in April for guidance as to treatment of landmarks petitions during Covid-19, and that the office “found accepting electronic signatures to be a reasonable result” given then-existing state and/or

local executive orders and states of emergency. A copy of Mr. Fiechter's correspondence is attached hereto as Exhibit 1.

Contrary to the County Attorney's position, the acceptance of electronically submitted names and addresses is inconsistent with the plain language of the Landmarks Ordinance and Kentucky law. LMCO § 32.260(I) requires 200 "verified signatures and addresses" for a valid individual landmarks petition. Although the phrase "verified signatures" is not defined in the Landmarks Ordinance, the legislative intent can be determined from the plain and ordinary meaning of the term "signature," which is defined as "the name of a person *written with his or her own hand*." See Merriam-Webster Dictionary Online (emphasis added); *Ky. OSHRC v. Estill Cty. Fiscal Court & Sec'y of Labor*, 503 S.W.3d 924, 929 (Ky. 2016) ("When interpreting an undefined term in a statute, . . . we interpret the law by applying the plain and ordinary meaning of relevant language within the statute.") Kentucky courts have held in similar contexts that where the law requires a "signature," it means a handwritten signature affixed by the signee. See *Barnard v. Stone*, 933 S.W.2d 394 (Ky. 1996) (Election candidacy petition with 398 signatures that also "bore the names of four other persons who authorized their names to be affixed to the petition but did not personally sign it" did not satisfy a statute requiring 400 "signatures.")

That Metro Council intended the phrase "verified signatures" to mean more than mere names and addresses is also clear from the statutory scheme as a whole. For example, LMCO § 32.260(C), concerning district landmark petitions, requires only "verified names and addresses," and does not use the term "signatures." Thus, the use of the term "signatures" in LMCO § 32.260(I) must mean that Metro Council intended for the individual landmark petition to require handwritten signatures and not merely "names and addresses." See *Jefferson Cty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 721 (Ky. 2012) ("[O]ur statutory construction principles also mandate considering the statute in context with other statutes surrounding it.")

Furthermore, to the extent the electronic submission of mere names and addresses could be considered an "electronic signature"—which is dubious, at best—acceptance of those electronic signatures would be contrary to Kentucky's Uniform Electronic Transactions Act, KRS 369.101 *et seq.* ("KUETA"). The KUETA provides that a governmental agency may use or permit the use of "electronic signatures," but it must do so "in compliance with standards established by the Commonwealth Office of Technology." KRS 369.118(1). To my knowledge, neither the Commission nor Planning and Design Services have articulated any standard for the acceptance of electronic signatures.

Finally, the Executive Orders signed by Governor Beshear or Mayor Fischer related to the Covid-19 pandemic do not in any way prohibit the collection of physical signatures, as is evidenced by the fact that the Petitioner was able to obtain 36 handwritten signatures—many, if not all, of which appear to have been collected in August 2020, well after the Covid-19 pandemic began.

In sum, neither the plain language of the Landmarks Ordinance nor Kentucky law permits Metro Government to accept electronically submitted names and addresses in support of an individual landmarks petition. Accordingly, the Petition must be rejected because it does not contain the "verified signatures and addresses" of at least 200 residents of Louisville Metro.

Louisville Historic Landmarks & Preservation Districts Commission

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Sincerely,

A handwritten signature in blue ink, appearing to read "Clifford H. Ashburner", with a long horizontal flourish extending to the right.

Clifford H. Ashburner

From: Fiechter, Travis J. <Travis.Fiechter@louisvilleky.gov>

Sent: Friday, August 21, 2020 3:03 PM

To: Ashburner, Clifford <Clifford.Ashburner@DINSMORE.COM>; Johnson, Cynthia E <Cynthia.Johnson@louisvilleky.gov>;

Marchal, David <David.Marchal@louisvilleky.gov>

Cc: Ferguson, Laura M. <Laura.Ferguson@louisvilleky.gov>

Subject: RE: Electronic Signatures

Cliff,

Staff approached us in April with the problem of how landmarks petitions should be treated during COVID, seeing as the regular means of gathering physical signatures were rendered dangerous if not in outright violation of State and/or local executive orders and states of emergency. Door to door solicitations, for example, were explicitly prohibited by executive order of the Governor. Under the circumstances, coupled with heightened scrutiny concerning authenticity, we found accepting electronic signatures to be a reasonable result, especially considering the alternative was to effectively suspend the landmarking process during COVID. To allow a global pandemic to result in a demolition free-for-all sans the regular scrutiny and process such actions might incur would have been in violation of the clear intent of the Landmark and Demolition ordinances.

Hope that resolves your questions,



Travis J. Fiechter

Assistant County Attorney

Office of Mike O'Connell - Jefferson County Attorney

(502) 574-1037

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Fiscal Court Building

Louisville, KY 40202

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