

FROM: Daniel & Elizabeth Fauxpoint  
1505 Rosewood Ave., #7  
Louisville, KY 40204

TO: Dr. Jim Mims  
Director of Develop Louisville  
Louisville Metro Government  
444 South Fifth Street  
Louisville, KY 40202

May 3, 2015

**RE: Follow-up to our 4/24/15 Meeting**

Dear Dr. Mims:

This letter is to follow-up on our 4/24/15 meeting. Further review of the answers provided by Metro staff on that day raised additional questions presented in the following pages. We look forward to addressing them at the continuation meeting, which you indicated would be scheduled by your assistant, Johnny Fontaine.

1 – Issues with HRG's Development Plan are still fundamentally unresolved

1.1 – Exact identification of the documents constituting HRG's Development Plan

Metro staff asserted on 4/24 that the site plan submitted by HRG to PDS on 7/21/14 and subsequently presented to the Planning Commission in August 2014 constitutes HRG's development plan.

Staff also acknowledged that HRG then submitted a revised site plan in December 2014, followed by a landscape plan (approved this March), which is essentially the December 2014 site plan with additional landscaping information.

This position is untenable, as the July 2014 site plan and the latest site/landscape plan depict two vastly different new proposed buildings (in July the new proposed building is 4,788 SF, in the latest plan the new proposed building is 3,549 SF, the two buildings also differ in shape and dimensions and key external features like porches and means of ingress/egress): these two significantly different site plans cannot be considered one and the same.

1.2 – Incompleteness of HRG's Development Plan

Code compliance determination requires analysis of a detailed development plan, defined in LDC 2006 (p.36) as a "Development plan that depicts specific location and type of proposed improvements, **in adequate detail to determine compliance with specific standards of the LDC as required.**"

We contend that the two site/landscape plans mentioned above are missing the following several key pieces of information that HRG needs to provide to make their development plan detailed and complete enough to undergo proper compliance review:

- Existing natural conditions (high Karst terrain)
- Drainage of surface water (i.e. EPSC Plan<sup>1</sup>)
- Access points

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<sup>1</sup> The most recent EPSC plan we know of is dated September 2013 and based on a site plan that depicts a new building including an underground garage: this garage was eliminated from the most recent site plans.

- Conditions agreed to by the applicant (none of the latest site plans show the sidewalk improvements mandated as a binding element by the Planning Commission in August 2014)

### 1.3 – LDC 2006 Compliance Issues for all known site plans as of 4/24/15

Both of the site plans mentioned in 1.1 contain a number of severe LDC 2006 compliance issues that have been brought to the attention of Metro staff on multiple occasions and remain unaddressed as of today. The most egregious violations include:

1.3.1 – Exceeding the permitted FAR for an R7 zoning district.

1.3.2 – Failure to meet the PYA variance requirements (in all plans, HRG continues to claim as PYA areas that are strictly disallowed by Code).

For a full list of compliance issues for each plan we refer staff to:

- The documentation submitted by the Rosewood Council to the Planning Commission in preparation for the August 2014 hearing on HRG’s application for parking waivers.
- The documentation submitted by Elizabeth & Daniel Fauxpoint to Joe Reverman during our meeting with him in September 2014.
- The documentation submitted by Elizabeth & Daniel Fauxpoint to Joe Reverman during our meeting with him in January 2015.

As of today we have not received answers that would refute the code compliance issues we believe we have identified in these plans.

### 2 – Issuance of new building permits to HRG in April 2015

David Marchal indicated during our 4/24 discussion that new building permits had either just been issued to HRG, or were in the process of being imminently issued.

We voiced our perplexity and grave concerns when informed that Metro staff had decided to proceed with permits issuance while being fully aware of the following facts:

- There is no official, complete, and internally consistent development plan for this project (i.e. all documents depicting the same project/building).
- No appropriate review of available plans has yet been conducted, and therefore there is no officially approved development plan to support the issuance of new building permits.
- As mentioned in section 1, all currently known site plans exhibit major Code compliance issues.
- We have thoroughly documented the fact that HRG has performed unpermitted construction on the site during earlier phases of the condo project, and that mandatory administrative documents are either missing or incomplete.
- There are critical non-conformance issues with this property that need to be addressed before allowing any additional development activities: we are preparing a detailed analysis of these issues and will be submitting them to Metro staff. We believe that these non-conformance issues alone could simply prohibit any additional expansion of the existing condo regime.
- We also submitted documented evidence of a potential sinkhole on the development site.

We previously mentioned that the issuance of a building permit is a ministerial act, and we do not believe that the city & staff would intentionally want to open various parties to liability by issuing new building permits before properly resolving all currently known issues.

## 2.1 – Additional details on disagreements concerning review status

We contend that the nature and scope of HRG’s condo development project meets the criteria requiring a Category 3 Review (the full condo project includes over 10 dwelling units). Staff asserted on 4/24 that the Planning Commission did perform such a review as part of the August 2014 Parking Waiver processing.

We strongly disagree with staff's position for the following reasons:

2.1.1 – The Planning Commission chairman explicitly stated that the Commission was concerned only with the appropriateness of the parking waiver request, and they were not examining the development project in its entirety.

In addition, members of the community who gave opposition testimony were prohibited from discussing plan elements not directly related to the parking waivers request.

2.1.2 – Joe Reverman, the case manager at the time of the Planning Commission hearing, made the following statements:

At 49:40 on the public hearing video recording:

“However, I want to make it clear to the Commission that the Commission is not acting on a development plan today. You're just acting on a parking waiver request. The plan that's proposed in front of you today is not going to be - the applicant is not going to be bound by any binding elements to construct this 3 unit building in exactly the location shown on the plan or things of that nature.”

We believe that Joe Reverman made this statement specifically because he was aware of non-compliance issues (several of which he subsequently acknowledged in a follow-up meeting with us in September 2014) with the site plan that was presented to the Commission on that day.

2.1.3 – As mentioned in 1.2 above, per LDC 2006, code compliance must be evaluated via the review of a detailed development plan, and to the best of our knowledge there is no official, internally consistent, and complete detailed development plan for this project as of this writing.

**Based on the above, we assert that in addition to the fact that HRG has no officially recognized and properly documented detailed development plan, the various site plans presented in 2014 and 2015 have never been subjected to a Category 3 review, and we request that such a review be conducted, following all required rules and procedures.**

## 2.2 – Additional details concerning outstanding and uncured violations related to unpermitted construction work and missing and/or incomplete inspections

We assert that HRG has performed unpermitted construction activities. Despite our several Open Records Requests, the city is unable to produce permits authorizing the construction of several structures/additions, or the associated inspection reports and related certificates that should have been issued.

On 4/24, David Marchal indicated that this inability to produce some of these documents, in particular permits, could be explained by the city's record retention policies, stating (@ 1:11:20 in meeting audio recording):

“Our current record retention is 5 years, so if it was done more than 5 years ago, they may have gotten permits, we just disposed of them.”

We content that the answer provided by the city is unacceptable for the following reasons:

2.2.1 – Permits older than 5 years are currently available on the Louisville Metro website, for example Building Permit #45216 that was issued on 11/19/04 for the interior renovation of the existing primary structure.

Moreover, the website provides comprehensive data on all issued permits as far back as 2003. Again, none of the suspect construction activities are listed in the online Building Reports.

2.2.2 – The Louisville Metro Records Retention Schedule<sup>2</sup> requires different retention policies for different types of records, and while issued Building Permits (Series L5999) must be retained for at least 5 years, a Certificate of Occupancy (Series L6001) cannot be destroyed until the corresponding structure itself is destroyed.

Therefore we believe that the lack of an applicable Certificate of Occupancy for condo unit #9 constitutes proof of the absence of proper building permits for this structure. The only Certificate of Occupancy the city has been able to produce is the one related to building permit #45216, and is a Certificate of Occupancy for only 8 condos.

2.2.3 – In any case, it would be reasonable to expect that HRG themselves, or their contractors, have kept copies of all permits they were issued, but the city has not indicated that they attempted to contact these entities to obtain any available copies.

We understand that following our 4/24 meeting you have made the decision to suspend the new permits that your staff had either just issued or were about to issue on that day.

This is the second time in the span of a little over one year that building permits must be suspended immediately after being issued to HRG, based on severe issues we have brought to the city's attention because the information provided by HRG cannot be trusted and has been shown time and again to be incorrect.

We want to emphasize one more time that all these difficulties stem from the fact that HRG seems to have systematically misled city officials over the years, and that they have failed repeatedly to follow proper procedures at the various stages of this condominium development project

We believe that this documented history of distortions, omissions and failure to adhere to processes, should warrant an independent review of all numbers and measurements provided by this developer on the final documents they will produce as part of their official detailed development plan to be subjected to a proper Category 3 review.

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<http://kdla.ky.gov/records/recretentionschedules/Documents/Local%20Records%20Schedules/LouisvilleMetroRecordsRetentionSchedule.pdf>

We also believe it would be fair and reasonable to provide us with the ability to review all available case documents we haven't had access to yet so that we get a chance to analyze them for other potential compliance issues before Metro staff takes any further action that could allow this project to move forward.

We thank you again for your continued attention to the numerous issues surrounding this case.

Sincerely,  
Daniel & Elizabeth Fauxpoint



Elizabeth Fauxpoint

cc:

Jonathan Baker, Assistant County Attorney  
Mike Beard, Plan Review Supervisor, Develop Louisville  
Phil Craig, Acting Director, Division of Building Codes Enforcement  
Doug Hamilton, Chief of Public Services  
Mandy Hayden, State Building Inspector, Department of Housing, Buildings & Construction  
Robert Kirchdorfer, Director of Codes & Regulations  
Emily Liu, Director of Planning & Design Services  
David Marchal, Assistant Director, Develop Louisville  
Joe Reverman, Planning & Design Manager, Develop Louisville  
Bill Seiller, Attorney, Seiller Waterman  
Steve Skinner, Supervisor, Building Codes Enforcement