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Date..... July 10, 2006

WHEREAS, on June 21, 2006, the Historic Preservation Commission conditionally approved an application from James and Sandra Quilty for a Certificate of Appropriateness for exterior alterations to their home at 814 17th Street in the Sherman Hill Historic District and for the construction of a new carriage house upon vacant land adjacent to the home; and,

WHEREAS, the Commission's approval of the Certificate of Appropriateness is subject to a requirement that the proposed new carriage house be moved behind the Quiltys' house at 814 17th Street, rather than being located to the side of the house; and,

WHEREAS, James and Sandra Quilty have appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The appeal by James and Sandra Quilty is hereby down set for a public hearing before the City Council on July 24, 2006, at 5:00 p.m., in the Council Chambers, City Hall, Des Moines, Iowa.
2. The City Clerk is hereby authorized and directed to publish notice of said hearing in the form hereto attached all in accordance with §362.3 of the Iowa Code.

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk

### 814 17th Street

Appeal from the decision of the Historic Preservation Commission to conditionally grant a Certificate of Appropriateness for a new carriage house



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C R A W F O R D  
L A W  F I R M

July 5, 2006

Hand Delivered  
Clerk of the City of Des Moines  
400 Robert Ray Drive  
Des Moines, IA 50309

CITY CLERK  
DES MOINES, IOWA

2006 JUL - 5 PM 12: 46

FILED

Re: Partial Appeal of Historic Preservation Commission ("HPC")  
Decision  
Case No: 20-2006-5.49

To Whom It May Concern:

Please consider this correspondence as our appeal of the portion of the HPC Decision that requires construction of the proposed carriage house on our existing 50' wide parcel of land at 814 17<sup>th</sup> Street. At the meeting of June 21, 2006 where our application was discussed, two reasons were articulated in support of placing this condition on the approval of our carriage house plan: (a) the Sanborn map shows that a home was once situated on the 60' x 125' vacant lot to the south of our existing property line; and (b) the affect on the view of the property immediately west of the vacant lot. Neither reason merits the HPC's placement of "conditions" on our plans.

As for the Sanborn map, City Staff's concern centered on a desire to see a home relocated to the lot. (A copy of Staff's recommendations is attached as Exhibit 1). This is not likely given our purchase of 50% of the lot, the desire and intention of the other 50% owner of the vacant lot, and the placement of a restrictive covenant precluding any use of the land other than as we have proposed and the intention of the party placing that condition to enforce the covenant. First, as 1/2 owner of the vacant lot in question, neither my wife nor I desire nor would we consent to a home being located on the parcel in question. The other 1/2 owners, Deb Copeland and Jeremy Phillips, also oppose such a use. (See affidavit of Deb Copeland and Jeremy Phillips attached hereto as Exhibit 2<sup>1</sup>). That desire is predicated on the property owners' wishes to have larger and more functional yards as both families have young children. Hence, it seems the prospect of a home being relocated on the lot is purely speculative and is not grounded in reality

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<sup>1</sup> Due to time constraints, we were unable to have a notary present at the time of execution. Hence, neither affidavit submitted with this appeal has been notarized.

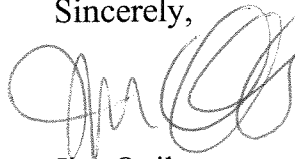
unless, of course, the City desires to go the extraordinary route of trying to acquire the property via eminent domain.

In addition, a restrictive covenant has been recorded on the property barring any construction on the lot other than a carriage house as we have proposed. (A copy of the covenant as appearing in the abstract of the property is attached as Exhibit 3). The party that recorded the covenant does not intend to waive enforcement of the covenant. (See Affidavit of Ralph Gross attached hereto as Exhibit 4). Hence, not only is the desire to see a home on this lot illusory, it would be a direct violation of the covenant which would be deemed enforceable. See *Beeler Development Co. v. Dickens*, 120 N.W.2d 414 (Iowa 1963). As the covenant was recorded it does not run afoul of Iowa Code § 614.24. The underlying rationale for the placement of the covenant – to create a shared side yard consistent with homes immediately to the south on the 700 block of 17<sup>th</sup> – is advanced under our proposal. Moreover, our proposal would make location of our carriage house consistent with the Copeland/Phillips’ carriage house as it also encroaches into the vacant lot.

The second rationale articulated at the HPC meeting, how the proposed location of the carriage house might impact the view of the property owner immediately to the west of the proposed site, is also unfounded. First, if the lot were dedicated to the use preferred by City Staff (a home) the “view” would be even further impaired. Second, relocating the carriage house as suggested by HPC still affects the property owner in question’s view, would also affect the view of the property owner immediately to the North and affects the view from our kitchen as well.

Based on the above, I would like the condition placed on the approval of our carriage house stricken so that construction – which has already been delayed – can commence. I will be out of town until July 17<sup>th</sup> 2006. However, if this item is placed on the Council’s agenda before such time, please provide notice to my counsel, Jon Garner, at the above address and he will appear on my behalf.

Sincerely,



Jim Quilty