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February 4, 2021

Via E-mail

Jonathan E. Farnham, Ph. D.
Executive Director
Philadelphia Historical Commission
1515 Arch Street, 13th Floor
Philadelphia, PA 19102

Re: Nomination of 3101 W. Passyunk Avenue and 3143 W. Passyunk Avenue

Dear Dr. Farnham:

We represent Philadelphia Energy Solutions Refinery and Marketing LLC ("PESRM"), the owner of 3143 W. Passyunk Avenue (the "PESRM Property") and an affiliate of Hilco Redevelopment Partners ("HRP"). As you know, the Committee on Historic Designation is scheduled to consider the nomination of the PESRM Property and 3101 W. Passyunk Avenue, owned by the City of Philadelphia (the "City Property"), at the Committee's March 3, 2021 meeting. For the reasons explained below, we write to request that the Historical Commission staff: (i) bifurcate the nomination of the PESRM Property from the nomination of the City Property, and (ii) return the nomination of the PESRM Property to the nominator because it is incomplete with respect to the PESRM Property. Moreover, as further explained below, the Historical Commission is effectively precluded from considering the nomination of the PESRM Property because the nominated structures are practically invisible from the public right-of-way, and the nomination has been effectively preempted by pre-existing redevelopment plans.

1. Staff should formally bifurcate the nomination of the PESRM Property from the nomination of the City Property.

The Committee on Historic Designation's agenda lists "3101 and 3143 W Passyunk Ave" as a single nomination under consideration. However, the nominator, The Keeping Society of Philadelphia (the "Nominator"), actually submitted two nomination forms, one for the City Property and one for the PESRM Property. In addition, the nominated properties are wholly separate tax parcels under separate ownership, with separate legal representation and with separate buildings under consideration for designation. Under these circumstances, to provide each property owner with sufficient due process and an appropriate administrative proceeding to evaluate and respond to each nomination, the nominations should be bifurcated.

2. Staff should return the nomination of the PESRM Property (the “Nomination”) to the Nominator because the Nomination is incorrect and incomplete.

The Historical Commission Rules & Regulations (the “Regulations”) provide that Historical Commission staff:

“shall review nominations for technical and substantive correctness and completeness. The **staff shall return** incorrect and/or incomplete nominations to the nominators with written explanations of the deficiencies. **The staff shall not forward** incorrect and/or incomplete nominations to the Committee on Historic Designation or the Commission. The staff shall advise the Commission of all nominations deemed incorrect and/or incomplete.” Regulations Section 5.8.a. (emphasis added).

The Nomination includes four structures as part of “Resource 4,” the only nominated resource on the PESRM Property: structure 4a (“Retaining Walls”), structure 4b (“The Kilns”), structure 4c (“Access Road”), and structure 4d (“Pump House”). However, the Nomination does not document these structures in the manner required by the Regulations. The Regulations (Section 5.5.a) prescribe the required elements of nominations, which include several items that are incomplete or incorrect in the Nomination:

- Regulations Section 5.5a(5) requires “categorizations of the resource’s condition, occupancy, and use.” Such information allows Historical Commission staff to evaluate the current context of a nominated structure. The Nomination incorrectly fails to disclose that the PESRM Property is vacant and slated for redevelopment by PESRM and HRP. This redevelopment, as reviewed by City, State, and Federal agencies, will include demolition of all structures on the PESRM Property, environmental mitigation measures, significant soil management and capping, and construction of a logistics center that will support approximately 13,000 construction jobs and 19,000 permanent on-site jobs. The Nomination also misleadingly nominates an access road that has long since been paved over *with asphalt* and in no way represents its historical condition, similar to the condition of the retaining walls and kilns, which are now in ruins.
- Regulations Section 5.5.a(12) requires “photographs of the resource and its site and surroundings.” Recent photographs of nominated structures are essential to allow Historical Commission staff to evaluate each structure’s integrity and significance. The Nomination includes only three recent photographs – all aerial – of Resource 4: Figure 48, which shows only the roof of one structure, Figure 51, which shows the roof of the same structure from a different angle, and Figure 52, ostensibly of structure 4b, which includes a caption that the structure is “largely not visible due to vegetative growth and debris.”
- Similarly for Resource 4, the Nomination lacks the required “narrative description of [the resource’s] physical appearance” (Regulations Section 5.5.a(9)) – the

Nomination includes less than 10 sentences in total about all four structures included as part of Resource 4.

The missing textual description, combined with the lack of adequate photographic documentation of the structures, clearly renders the Nomination of the PESRM Property and Resource 4 incorrect and incomplete. Consequently, the staff should return the Nomination to the Nominator for completion prior to any consideration by the Committee on Historic Designation -- and prior to any resulting Historical Commission jurisdiction (limited or otherwise).

3. **The nominated structures on the PESRM Property are essentially invisible to the public due to their location deep in the interior of an extremely large property, meaning that designation would serve no public purpose.**

The only public right-of-way near the PESRM Property is the elevated West Passyunk Avenue, which has no sidewalk, a speed limit of 35 miles per hour, and is approximately 600 feet from the closest of the nominated structures. These facts, combined with the fact that most of the nominated structures are “largely not visible” even from within the PESRM Property, mean that, simply put, even if the Historical Commission designated the structures, the public would receive no benefit, while the PESRM Property would be burdened. It would be nonsensical (and beyond the power of the Commission) to designate structures that are, in their entirety, essentially invisible to the public.

4. **Designating the PESRM Property could frustrate a previously approved and already commenced redevelopment effort that involves hundreds of millions of dollars of investment toward significant environmental mitigation and economic development.**

As likely known by the Nominator and Historical Commission staff, HRP intends to redevelop the PESRM Property and surrounding properties (totaling approximately 1,300 acres) as a logistics center with approximately 13 to 15 million square feet of floor area, generating approximately 13,000 construction jobs and 19,000 permanent jobs for one of the largest economic development projects in the history of the City of Philadelphia. As part of the redevelopment plan previously vetted with City, State, and Federal officials, the PESRM Property will serve as a critical transportation link between the northern and southern portions of the redevelopment area, and designation of the nominated structures could frustrate HRP’s ability to redevelop the larger property as intended.

HRP commenced its redevelopment efforts in early 2020¹ and filed redevelopment plans, including its soil management plan (the “SMP”), with City, State, and Federal officials as early as March 2020, *i.e.*, prior to the staff’s review of the Nomination and subsequent notice to PESRM on May 15, 2020. The SMP includes the complete demolition of the existing structures on the PESRM Property, floodplain and stormwater management plans, and other

¹ The U.S. Bankruptcy Court authorized the sale to HRP in February 2020 -- contemplating the complete redevelopment of the PESRM Property.

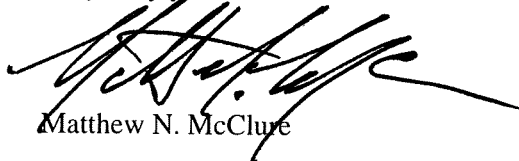
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environmental mitigation efforts -- changing the entire grade of the PESRM Property to complete the approved environmental remediation. The Pennsylvania Department of Environmental Protection and the U.S. Environmental Protection Agency all reviewed and approved of the SMP, effectively preempting the historic designation of the PESRM Property in any manner that frustrates the SMP. Furthermore, the Regulations explicitly permit Historical Commission staff to "consider development plans in place at the time of the issuance of the notice announcing the consideration of a designation including but not limited to executed contracts, substantial design development, or other evidence of a material commitment to development." Regulations Section 6.9.10.a.

As outlined above, the Nomination is incorrect and incomplete and nominates structures that are essentially invisible to the public, and designation could frustrate a major, preexisting economic development project. The Historical Commission staff should therefore return the Nomination to the Nominator.

Thank you for your consideration, and please let us know if you have any questions. PESRM and HRP reserve their right to supplement this letter (to the extent necessary) with additional evidence regarding the merits of the Nomination.

Very truly yours,



Matthew N. McClure

MNM/mpg

cc: Anne Fadullon, Deputy Mayor for Planning and Development
Jeremy J. Grey, EVP – Hilco Redevelopment Partners
Justin Dunn, SVP – Hilco Redevelopment Partners
David Gest, Esquire
Eileen Quigley, Esquire
Devon Beverly, Esquire



CITY OF PHILADELPHIA

PHILADELPHIA HISTORICAL
COMMISSION

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Robert Thomas, AIA
Chair

Jonathan E. Farnham, Ph.D.
Executive Director

19 February 2021

Matt McClure, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Re: 3143 W. Passyunk Avenue, Philadelphia, PA

Dear Mr. McClure:

Thank you for letter regarding 3143 W. Passyunk Avenue, dated 4 February 2021. The property has been nominated for designation to the Philadelphia Register of Historic Places as historic and the nomination is scheduled to be reviewed by the Philadelphia Historical Commission on 9 April 2021 and its advisory Committee on Historic Designation on 3 March 2021.

In Point 1 in your letter, you request that the Historical Commission and Committee on Historic Designation bifurcate the reviews of the nominations for 3101 and 3143 W. Passyunk Avenue. While I cannot compel the Commission and Committee to address the matters as you suggest, I can agree that the Commission's staff will list the two nominations separately on the agendas and will post the nominations for the two properties separately on the Commission's website with separate staff recommendations and nomination forms.

In Point 2 of your letter, you argue that the Historical Commission's staff should return the nomination to the nominator as incorrect and incomplete. The staff determined that the nomination was sufficiently correct and complete for review by the Commission and Committee prior to sending notice to the property owner on 15 May 2020. The nomination has been presented to the Commission and Committee at several public meetings, albeit with continuance requests, which have been granted. The staff cannot rescind its decision about correctness and completeness at this point in the process, regardless of the validity of that decision. The matter is now in the hands of the Historical Commission and Committee on Historic Designation. The Commission's Rules & Regulations at Section 5.10.b anticipates disagreement over decisions about correctness and completeness and authorizes the Committee to disagree with the staff and recommend to the Commission that a nomination is incorrect and incomplete. At this point in the process, your arguments regarding the insufficiencies of the nomination should be directed at the Committee and ultimately the Commission, not the staff. The staff cannot unilaterally return the nomination to the nominator as you request.

In Point 3 in your letter, you contend that the property in question is not accessible or even readily visible to the public, owing to its remote location along the river, and therefore should not be designated because designation is intended to preserve historic resources for the public's appreciation. Such arguments may have validity, but should be reserved for the Historical Commission itself, which has the discretionary authority to designate or not, not to the staff which has no authority in that realm.

In Point 4 in your letter, you contend that your client has vested rights in the redevelopment project with approvals from state and federal agencies, and that the Historical Commission's staff should take them into account, pursuant to Section 6.9.10.a of the Commission's Rules & Regulations. Please note that the cited section of the Rules & Regulations relates to the review of building permit applications, not the review of nominations, and is therefore not applicable to this matter. You may, of course, make a vested rights argument to the Historical Commission with the assertion that the Commission should use its discretion and decline to designate because your client has committed to a redevelopment project, but the staff has no authority to change the course of the review of the nomination based on any potential vested rights. Such arguments should be reserved for presentation to the Historical Commission.

In conclusion, the staff of the Historical Commission does not have the authority to reject the nomination for 3143 W. Passyunk Avenue at this point in the process as you propose. The staff will bifurcate the reviews of the nominations, providing the Historical Commission and Committee on Historic Designation with separate overviews and recommendations from the staff and listing the reviews of the nominations for 3101 and 3143 W. Passyunk Avenue separately on the Commission's and Committee's agendas. However, the staff cannot dictate how the two bodies will review the nominations. Your arguments regarding the strength of the nomination, public visibility of the site, and potential vested rights may be germane to the Commission and Committee and may be presented to those bodies, in advance of the reviews in writing, and/or during the reviews.

Thank you again for your letter. Please contact me if I can be of assistance.

Yours truly,

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

Jonathan E. Farnham, Ph.D.
Executive Director