BEFORE THE COMMITTEE ON HISTORIC DESIGNATION
OF THE PHILADELPHIA HISTORICAL COMMISSION

In re Nomination to Designate 46-48 West Logan Street as a Historic Building, Structure, Site, or Object	:	**Memorandum of Law of Independence Mission Schools in Opposition to Designation**

We represent Independence Mission Schools ("IMS"), a Pennsylvania nonprofit corporation, the owner of the subject property and the operator of The DePaul School on the campus of the former St. Francis of Assisi parish in Germantown. The mission of IMS is "to provide sustainable, affordable, high-quality Catholic education to nearly 4,000 children of all faiths in underserved urban neighborhoods." (Form 990, 2025).

IMS submits this memorandum of law in opposition to the Nomination to designate 46-48 West Logan Street as a historic building.

The Property Does Not Meet Any of the Criteria for Designation Proposed in the Nomination

To the extent the question before the Committee is whether the premises in question meets criteria (d), (e) or (j) of Section 14-1004 of the Philadelphia Code, the answer is a clear no.

Those criteria and our responses are as follows:

(d) Embodies distinguishing characteristics of an architectural style or engineering specimen;

The Nomination makes no case for criterion (d) except the statement that the building is an "example of the Romanesque Revival style" (Nomination p.25) and that the building is a "Romanesque Revival ecclesiastical building." (Nomination p.3). The CivicVisions Report makes clear that it is a poor example. The Nomination makes no claim that the subject is exemplary and the CivicVisions Report makes clear that no such case can be made.

As the CivicVisions Report makes clear, there is nothing distinguishing about the building in question, it is nothing more than a copy of the design ideas and techniques in common use in the era prior to its construction. (CivicVisions Report p.9).

(e) Is the work of a designer, architect, landscape architect or designer, or professional engineer whose work has significantly influenced the historical, architectural, economic, social, or cultural development of the City, Commonwealth, or nation;

The Nomination on its face makes no case for the architect having influenced anything or anyone. The Nomination merely asserts without evidence that he was an "architect whose work influenced the City...and the region." As the CivicVisions report makes clear, the architect has never been recognized by anyone for anything, he inherited a significant Victorian practice from his father and never rose above his father's late repetitive work. It is at best described as unremarkable "generic Gothic" as the CivicVisions Report notes. (CivicVisions p.22 (quoting Sandra Tatum)). There is no record of anyone ever having said a good word about him or his work prior to the Nomination.

The Nomination alleges that the architect "eventually [achieved] emeritus status in the American Institute of Architects in 1957." (Nomination p.24). "Emeritus status" in the AIA is available as a matter of course today to members in good standing for 15 successive years (or members for at least 25 years if in good standing for the most recent 3 years) who have attained the age of 70 or are incapacitated. (AIA Bylaws 2.3.1). Emeritus status is not a mark of distinction; "Fellow", which is, he wasn't. Criterion (e) clearly fails.

(j) Exemplifies the cultural, political, economic, social, or historical heritage of the community

Every church building, every civic building of any kind, will have exemplified some aspect of heritage of the community. No such building would ever have been built but for some shared interest in its purpose. That said, the subject is an example of a relatively short lived congregation which moved away and left it. (Nomination p.20, CivicVisions Report p. 5). The Nomination under criterion (j) asserts with no authority that the building was important to the Irish founders. Instead, those very families voted with their feet, left and abandoned the Parish.

As late as the 1950 census, the Irish and to a lesser extent Italian component of the community was strong. By the 2010 Decennial Census, that population was entirely gone.

The Nomination would saddle the DePaul School with the burden of maintaining a building of no use to the School, in memory of the people who never particularly valued it and moved away or died.

The criteria for designation are expressed in general terms. They are not intended to qualify every building, structure, site etc. for designation, but rather are intended to be administered so as to protect those which "are significant to the City." (Philadelphia Code14-103(2) (a through c)). To designate the subject under criteria (d), (e) or (j) would be to render each criterion meaningless, by construing it to include everything and to exclude nothing.

IMS Invested Substantial Sums in Studying Restoration and in Preparing for Demolition Prior to Being Notified of The Nomination

The CivicVisions Report establishes from the record of two professional architectural practices that the building if adapted would not be ideal for the School's purpose, but the School none the less spent substantial time and money working on a plan to convert the building to gymnasium and assembly space. However, the School discovered that the cost of such a restoration far exceeded any sum that the School could raise. The cost to restore is due in part to improper construction and the use of asbestos in most of the interior architectural surfaces including the plaster walls and ceiling vaults and in the tile flooring, raising substantial doubt to its eligibility to be designated.

The School then expended considerable sums on engineering and preparation for permitting for demolition, and publicly acknowledged to the Commonwealth that it could not finance the restoration plan and needed to proceed with demolition and replacement of the building with a grass playing field. Only after all of that was the School informed of the present Nomination, which smacks of weaponization of the nomination process to impede the School's much needed creation of green space and outdoor play areas for its students.

Designation Would Violate Penn Central and Would Be Invalid Absent Public Purpose And Just Compensation

In Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) the Supreme Court upheld the individual historic designation of Grand Central Terminal against a challenge that the designation constituted a taking. The Supreme Court rested its ruling in significant part on the basis that the reasonable investment-backed expectations of Penn Central (i.e. use of the terminal as a railroad terminal with ancillary income from shops, restaurants and offices) were not diminished by the designation. The present case offers the opposite and constitutes a taking under the Penn Central rule.

As the CivicVisions report makes clear, IMS intended to use the portion of its property constituting the church and rectory to enhance its school. Since November of 2024 it made

substantial investments toward adapting the building for gym and assembly purposes, and it was prepared to proceed with that project even after learning that the dimensions were less than ideal. After considerable expense, IMS learned that the building could not be adapted except at extraordinary cost. That cost would have forced IMS to change its mission from providing "..affordable, high-quality Catholic education to nearly 4,000 children of all faiths in underserved urban neighborhoods" to "raising vast sums to restore an old decrepit building." IMS has spent considerable amounts proceeding with demolition of the building, including engineering and preparation for permitting. All of that investment occurred before notice of this nomination was furnished to IMS. IMS has a substantial investment-backed expectation--entirely within IMS' lawful property rights--in demolishing the building and making the land available to its students as a playing field.

Any designation of the church or rectory would constitute a taking under the Penn Central test, invalid unless for a public purpose and accompanied by just compensation.

Preemptive Objection to Consideration of Any Criterion Not Included in the Nomination

We understand that the Committee has sometimes considered criteria for designation in addition to those set forth in a nomination in making its recommendation to the Historical Commission. We preemptively and respectfully raise our objection to the consideration of any criterion other than those set forth in the Nomination, since the property owner has not been given notice or any opportunity to make a considered response.

The Philadelphia Code and Ancient Common Law Require That the Commission Refrain From Designation

The Historic Preservation provisions of the Philadelphia Code are contained within the Zoning Code .(Philadelphia Code 14-101). Zoning is an exercise of the police power. (Ryan, Pennsylvania Zoning Law and Practice, 2018 (hereafter "Ryan") 3.1.2 citing Ward's Appeal, 289 Pa. 458, 137 A. 630 (1927)). Zoning "conflicts with the rights of a property owner under common law and, therefore, must be strictly construed so as to limit the application of the ordinance." (Ryan, 4.2.4 citing Lord's Appeal, 368 Pa. 121, 81 A. 2d 533 (1951)). Further, zoning may only be lawfully imposed pursuant to and in compliance with a comprehensive plan. (Knight v. Lynn Township Zoning Hearing Board, 130 Pa. Cmwlth. 617, 568 A. 2d. 1372, citing Haar, In Accordance with a Comprehensive Plan, 68 Harv.L.Rev. 155 (1955)). The designation of this building would represent an improper application of the police power, wholly divorced from proper historic consideration and no part of any rational plan.

The ancient common law judges long recognized that the dead hand of the past could attempt to impose limitations on property to the detriment of the living, and those judges in their wisdom tried to limit the damage. (Duke of Norfolk's Case, 1692). This concept is prominent in cases construing restrictive covenants and trusts, but does not appear to have been recognized in preservation law. The time is past when it should. The children of the DePaul School can use a grass playing field today. They have no use for a ruined building of no particular merit by an architect of no particular merit built for a congregation which abandoned it.

CONCLUSION

For the reasons explained above and in the CivicVisions Report, IMS respectfully requests that the Committee decline to recommend nomination.

Respectfully submitted,
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