ATTACHMENT TO NOTICE OF APPEAL

Project Name: La Rive Condominiums—Ground Level Mechanical Equipment Addition

Project Address: 110 Bank Street Southeast, Minneapolis, Minnesota 55414

BZH No.: BZH-28023

Action Being Appealed and Reasons for Appealing

Action Being Appealed: The issuance of a Certificate of Appropriateness to construct a mechanical Cooling Tower projected to be 23 ½ feet high, 19 feet wide and 14 ¼ feet deep within feet of Appellant's bedroom balcony adjacent to French doors into Appellant's bedroom as well as Appellant's bedroom window.

Reasons for Appealing: Appellant challenges the Decision of the Heritage Preservation Commission ("HPC") regarding the Project referenced above on two grounds.

First, Appellant was denied a fair and complete hearing by failure of the Applicant La Rive Condominiums ("La Rive") to provide requested information critical to the HPC proceedings and by HPC's failure to grant a two week continuance to January 21, 2014, so that information could be made available and its merits considered by the HPC. Because of both failures, the HPC failed to consider material issues and the record is incomplete and is factually void of support for, and in fact inconsistent with, certain key HPC Findings. Accordingly, Application requests the City Council remand to the HPC.

Second, La Rive seeks to abandon a Certificate of Appropriateness granted in 2013 to allow a rooftop Cooling Tower in lieu of its current proposal. Appellant asserts that the record is clear that the rooftop location is more appropriate than the new proposal and is consistent with, if not required by, guidelines which prioritize rooftop placements. Further, the new proposal is "infeasible" based upon La Rive's own criteria for appropriateness and feasibility and violative of Appellant's property rights. Therefore, the Council can determine that the 2013 Certificate of Appropriateness already granted is appropriate, based upon the record of this appeal, and conclude that the proposed alternative is less appropriate on this record.

I. Appellant Was Denied A Fair and Complete Hearing before the HPC and the City Council Should Remand the 2014 Certificate Application for Further Public Hearing and Consideration of Appellant's Claims.

Appellant made several requests to Applicant La Rive for relevant information which was critical to understanding La Rive's proposal and to the merits of the HPC proceedings. Included in Appellant's requests made prior to the HPC hearing were materials from and an opportunity to meet with the La Rive Architects and related consultants to understand the proposed design, construction and operation of the proposed Cooling Tower; evidence of any Plume Study; and proposals from La Rive to protect Appellant's property interests which the La Rive

Condominium Association has a legal duty to protect and which Appellant assert are material to the HPC proceedings. La Rive failed to provide virtually any of the requested material.

Notice of the HPC public hearing held on January 7, 2014, was postmarked December 24, 2013, but not received until just before January 1, 2014. La Rive never provided copies of its HPC Application to Appellant. When Appellant found it on the HPC website, Appellant promptly reiterated Appellant's request for information and Appellant's strong concerns about the proposal. Appellant also raised concerns with HPC Staff and attempted to confirm and point out that the HPC record did not contain necessary information and analyses.

Most importantly, Appellant requested at the HPC Public Hearing on January 7, 2014, a continuance to its next meeting on January 21, 2014. La Rive opposed such a request. Among several matters which did not receive a fair and complete hearing before the HPC include:

1. La Rive's own HPC Application cites as inappropriate and infeasible placement of a Cooling Tower because it "conflicted with and interfered with the views from balconies and interior living space of existing condominium units." (Page 1 of the La Rive HPC Application.) The record contains unrefuted evidence that the proposal has huge such impact on Appellant's Unit. Moreover, no factual evidence related to, or independent comparison of, the other apparent alternatives not adopted as appropriate is in the record. Finally, Appellant contends that the already HPC-certified rooftop placement is the most appropriate in the record before the HPC. In fact, applicable guidelines prioritize use of recessed mechanical units on rooftops.

2. A Plume Study appears not to have been conducted or was withheld from Appellant. HPC consideration of the merits require a Plume Study for one or more reasons. The HPC is required to minimize the visual impact as seen from the public way and to minimize the visual impacts of utility lines, junction boxes, and similar equipment. It is conceded that the proposed Cooling Towers will create plumes during operation for much of the year. The proposed location is clearly visible from the public way and the plume almost certainly would be visible from various public ways and historic structures and vistas. Secondly, using La Rive's own criteria, the plume would also make the proposed location of the Cooling Tower "infeasible".

3. La Rive has a legal duty under the Minnesota Common Interest Ownership Act, and La Rive's own Declaration, to protect Appellant's property interest and the Association has failed to address, and the HPC has failed to consider, the proposal in light of these legal rights and duties. These legal duties create a higher standard than a set-back requirement or Conditional Use permit standards. For example, no "use or practice (shall) be allowed which is a source of annoyance to the residents of the Property or which interferes with the peaceful possession or proper use of the Property by its residents." Applicant La Rive claimed at the hearing that they were sympathetic to Appellant's concerns but that it was a private dispute. Appellant's direct property rights imposing land use restrictions among common property ownership interest under State law are germane to the City's procedures, including the HPC, and cannot be ignored.

It should be noted that these examples may not include all germane issues since La Rive failed to provide relevant requested information and Appellant reserves the right to raise additional matters at the City Council Committee.

II. The City Council Could Find That The 2013 Certificate of Appropriateness for the Rooftop Location is More Appropriate Than The New Proposed Location.

La Rive contends that the 2013 Certificate of Appropriateness was subsequently determined to be "infeasible" because it may cost more than the new proposal. There is no factual record to justify that conclusion, nor is there any analysis of whether cost trumps the substantial questions raised regarding the merits of the new proposal under HPC guidelines and La Rive's legal duty to Appellant's property rights.

As suggested above, the record in fact demonstrates that the new proposal conflicts with HPC guidelines, including a guideline which expressly prioritizes rooftop placement, Appellant's property rights, and La Rive's own criteria for determining appropriateness.

The failure to consider factual and independent analyses of the appropriateness alternatives and other material matters lies with La Rive and its actions and inactions. Appellant asserts that the claims made in Section I above are substantiated by this record and, to Appellant's knowledge and belief, cannot be refuted in the law of the case and State law. Therefore, the City Council can determine that the 2013 Certificate of Appropriateness already granted is most appropriate, based upon the record of this appeal, and conclude that the proposed alternative is less appropriate on this record.

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January 31, 2014

VIA ELECTRONIC MAIL

Zoning & Planning Committee of the City Council
Minneapolis City Hall
350 South 5th Street
Minneapolis, MN 55415

RE: RESPONSE TO APPEAL OF THE DECISION OF THE HERITAGE PRESERVATION COMMISSION'S APPROVAL OF THE LA RIVE CONDOMINIUM MECHANICAL EQUIPMENT ADDITION

Dear Chair Bender and Members of the Zoning & Planning Committee:

The La Rive Condominium Association has asked our firm to assist them in responding to the appeal filed by Lee Sheehy ("Appellant") regarding the approval of a Certificate of Appropriateness ("COA") by the Heritage Preservation Commission ("HPC") for installation of a cooling tower and screening on the La Rive Condominium property. The Appellant objects to the proposed location of the cooling tower because of its proximity to the unit he owns in La Rive (Unit 301). The letter submitted to you by Dixie Purdom, the President of the La Rive Board of Directors, explains why the Association needs to install new heating and cooling equipment and why they chose the proposed location. The Appellant's objections are not based on the criteria in the City's ordinance for granting of a Certificate of Appropriateness. Rather, he is asking the City Council to inject itself into a purely private dispute between a condominium unit owner and condominium association.

THE PROJECT COMPLIES WITH THE REQUIRED FINDINGS FOR GRANTING A CERTIFICATE OF APPROPRIATENESS

La Rive is located within the St. Anthony Falls Historic District, but the 30-year old building is not itself a historic or "contributing" structure in the District. Nevertheless, the addition of the cooling tower to the property must receive a Certificate of Appropriateness in order to ensure that it is compatible with and not injurious to the historic structures and essential character of the historic district. The lengthy criteria ("required findings") for a COA are set forth verbatim in the staff report, which concludes that the proposed cooling tower design, enclosure and location meet the required findings. The HPC concurred with the staff recommendation and approved the COA.

As applied to a noncontributing, non-historic structure in a historic district, the criteria assess whether the proposed alteration is compatible with the continued "significance" and "integrity" of contributing properties and the character of the historic district. The HPC code defines these terms as follows:

> *Significance.* The authenticity of a landmark, historic district, nominated property under interim protection or historic resource evidenced by association with significant events or with periods that exemplify broad patterns of cultural, political, economic or social history; association with the lives of significant persons or groups; because it contains or is associated with distinctive elements of city or neighborhood identity; embodiment of the distinctive characteristics of an architectural or engineering type or style, or method of construction; its exemplification of a landscape design or development pattern distinguished by innovation, rarity, uniqueness or quality of design or detail; exemplification as a work of master builders, engineers, designers, artists, craftsmen or architects; because it has yielded, or may be likely to yield, information important in prehistory or history.
>
> *Integrity.* The authenticity of a landmark, historic district, nominated property under interim protection or historic resource evidenced by its location, design, setting, materials, workmanship, feeling or association.

The proposed cooling tower will not impair the significance or integrity of the St. Anthony Falls Historic District or any historic resources within it. Like La Rive, the adjacent properties to the east of the tower are noncontributing townhomes. The only historic properties from which the tower will be visible are to the west down 2nd Street SE. The tower will be screened from view from the sidewalk and historic properties by distance, oblique view angles, the brick veneered enclosure and vegetation.

The Appellant has suggested that the City should require submission of a "plume study" because the plume of exhaust air could be visible from historic properties. The appeal inaccurately assumes that the cooling tower will create visible plumes "for much of the year." The cooling tower will not operate in winter months as do boiler plants that produce the visible plumes we typically see in cold weather. According to the cooling tower manufacturer, the plume is visible on a limited number of days each year, typically in the spring and fall when the water vapor it contains condenses in contact with cooler ambient air. The design is intended to further minimize plume visibility by varying outlet air volume to mitigate the difference between plume temperature and ambient air temperature. To the extent the plume is visible on some days, it would be visible regardless of where the tower is located, and visible from more locations if the tower were on the roof or terrace. Further, there is no basis for concluding that the significance and integrity of historic properties would be impaired merely because an exhaust plume is occasionally visible down the street.

POTENTIAL ALTERNATIVES ARE IRRELEVANT TO THE CITY'S CONSIDERATION OF THE COA APPLICATION

The question for your determination in this appeal is solely whether the proposed tower meets the required findings in the ordinance. None of those criteria include assessing whether there are other

"feasible" alternatives that might also comply with the required findings or be felt to be "more appropriate." The applicant for a COA does not have any obligation to submit evidence regarding alternatives or any burden to prove that the there are no other feasible options. Nevertheless, as explained in the letter from Ms. Purdom, the Appellant's "preferred" location on the roof is not practical in light of its structural risk, vibration noise impacts on ten or more resident units, constructability problems and extreme cost.

The appeal states that the guidelines "prioritize rooftop placements" and, therefore, the previously approved rooftop placement is "more appropriate." The guidelines for building equipment are found on pages 4-5 of the staff report. The intent of the guidelines is to minimize the visual impacts of building equipment on the character of the historic district. In many circumstances, but not all, one way of doing that is to use "low-profile" or recessed mechanical units on rooftops. The La Rive rooftop was not designed for equipment and the letter from Ms. Purdom outlines in detail why retrofitting to allow placement of the cooling tower on the roof is not, after all, a good option. It is also worth noting that the previously proposed rooftop approach would have increased the height of the La Rive building by 19 feet – hardly "low profile." The brick veneer enclosure will screen the cooling tower equipment from view, such that it will appear more as "building" than "equipment." The enclosure itself will be screened by dense vegetation. Due to the placement, design and screening of the cooling tower and enclosure, the visual impacts will be minimal; therefore, the proposal meets the intent of this guideline.

THE APPELLANT HAD A FAIR AND COMPLETE OPPORTUNITY TO BE HEARD

The City complied with the requirements of the HPC ordinance that notice of the public hearing be mailed to property owners within 350 feet at least ten days before the hearing. According to the Appellant, the notice was postmarked two weeks before and was received more than a week before the hearing on January 7, 2014. The Appellant appeared at the hearing and had the opportunity to testify regarding his concerns. The City provided the Appellant with a fair opportunity to be heard.

The Appellant also had complete information about the COA application prior to the hearing. As explained in the letter from Ms. Purdom, residents and owners were notified of the recommendation and decision to locate the cooling tower at ground level in the northeast corner of the property in November 2013. Members of the Association's Energy Committee met personally with the Appellant on December 26, 2013 and provided him with the drawings, visual simulations and other information about tower. He had also obtained a copy of the HPC report and attachments prior to the hearing.

It is the normal and usual course that final design work is not completed until after the HPC approves a required COA. That is why Planning staff include as a condition of approval that CPED staff shall review and approve the final plans and elevations prior to issuance of building permits. Both the HPC and the Appellant had all the information that was relevant to the HPC's evaluation of whether the required findings can be made for granting the COA for the proposed cooling tower and screening. The HPC correctly adopted the findings in the staff report supporting approval of the COA.

THE CITY SHOULD NOT ARBITRATE A PRIVATE DISPUTE RELATED TO HOMEOWNER ASSOCIATION DECISIONS

Contrary to Appellant's assertion in the appeal statement, any rights he may or may not have under the Minnesota Common Interest Ownership Act are not germane to the City's procedures or decisions and should, in fact and law, be ignored by the HPC and the City Council. The City has no authority, and should have no desire, to intercede in the private legal relationship between a homeowners association and a homeowner. Nor should the City Council weigh in on which units in a condominium will experience lesser or greater impacts from an infrastructure project undertaken by the association. Unlike the criteria for evaluating conditional use permits, the criteria for a COA do not include evaluating whether the proposed use may be "injurious to the use and enjoyment of other property in the vicinity." See Minneapolis Code of Ordinances, Sec. 525.340 (2) (Required findings for conditional use permits)(emphasis added). But even in the case of a conditional use permit, the criteria do not include weighing impacts on residential units within the property to which the permit would apply. The Appellant's understandable concerns about the impact of the cooling tower location on the use or value of the non-historic condominium unit he owns in La Rive are simply not legitimate factors for the City Council to consider because they are not associated with protecting the significance or integrity of historic resources and are not related to the purpose of the HPC regulations or the criteria for evaluating an application for a COA.

CONCLUSION

On behalf of the La Rive Condominium Association, I urge the Committee and the City Council to concur in the recommendations of CPED staff and the approval of the Certificate of Appropriateness by the HPC and deny the appeal.

Best regards,

Carol Lansing

Enclosures

Letter from La Rive Condominium Association
Before and after images of cooling tower from Bank Street
La Rive Site Plan

cc: Council Member Jacob Frey
Lee Sheehy

dms.us.53570391.01

January 31, 2014

Zoning & Planning Committee of the City Council
Minneapolis City Hall
350 South 5th Street
Minneapolis, MN 55415

Re: La Rive Energy Plant Project

Dear Members of the Zoning & Planning Committee:

The La Rive condominium building was constructed in 1984 as part of a larger redevelopment project that included the Pinnacle-Falls condominium and the Riverplace office building. A centralized energy plant was built on the Riverplace property to provide heating and cooling service for all buildings in the complex. The city planning staff and the city council approved this development and the concept of a private energy center to service multiple buildings. Unfortunately for us, the developer at the time was both buyer and seller in regard to determining the terms of a 30-year contract that he knew he would be turning over to both condominium associations. As such, the terms are very disadvantageous to La Rive. Falls/Pinnacle was able to break this 30-year contract early approximately 3-4 years ago and claims to be saving $200,000 annually in energy costs. La Rive's 30-year contract with the energy plant manager, Sentinel, ends on December 31, 2014, and we have been continuously negotiating with Sentinel. To date, their proposals for ongoing service require that we install our own domestic water heating (boilers) and contribute to their capital requirements to upgrade their equipment to provide core water. Sentinel's proposals would result in substantially higher energy costs for the next 20 years.

Continuity of energy supply at an affordable cost is an existential issue for La Rive and its residents. The Energy Committee considered numerous options to meet this need. Objectives included:

- Project/result to be safe for residents, neighborhood and contractors
- Allow no interruption of heating/cooling service
- Minimize possible effects on homeowner property values
- Maintain quality of life in building and neighborhood
- Meet all applicable environmental and legal requirements
- Find the best solution balancing lowest cost with above priorities

Following more than two years of study and consultation with engineers, architects, and energy experts, the Energy Committee and Board, with input from residents, determined

that the best option is to invest in our own equipment to provide the most reliable and cost effective heating and cooling service to La Rive residents for the long term.

The heating and cooling system consists of two major elements: 1) boilers for domestic hot water and core water heating, and 2) a cooling tower for air conditioning. The boiler location was established relatively quickly in a section of the parking garage. Due to its physical size, the cooling tower cannot be placed inside our building. Due to the building footprint, the possible locations for a cooling tower on the property are limited to the north side of the building near the driveway, on top of the south-facing resident terrace located three levels above Main Street, or on top of the roof.

Rooftop Location

Initially, we pursued the option of placing the cooling tower on the roof and received HPC approval for that option in June, 2013. The roof option was attractive because it would have had the least impact on residents visually and on their use of common areas. However, further evaluation of how a rooftop system would be installed and maintained proved this option to have serious problems.

- La Rive's post tension structure is extremely difficult to modify and was not designed to support rooftop equipment.
- We could not receive contractor guarantees that the modifications would prevent vibration transmission to the residential units on the upper floors of the building. Vibration noise could be significant and could affect more than ten resident's units.
- All heavy tools and parts, both during initial construction and if needed for ongoing maintenance, would have to be hoisted by crane. A ground crane would be too heavy for the garages under Bank Street, so some combination of helicopter and building mounted cranes would be required.
- Water would have to be piped from the basement to the roof by means of a 4'x4' vertical shaft. Access is extremely difficult for construction inside the shaft. A leak in the tower or piping could be a major disaster for the building.
- The building's elevator is designed to deliver maintenance people and equipment no higher than the 27th (out of 28) floor. Work or inspection on the cooling tower would require contractors and inspectors to climb more than three stories before standing at the base of the cooling tower.
- A rooftop installation would cost approximately one million dollars more than the ground level installation and would have much higher operating and maintenance costs.

Terrace Location – River (South) Side Of Building

Installation of the cooling tower on the second floor terrace would pose similar problems due to the weight of the tower on the existing post-tensioned structural system and the potential for transference of vibrations to residential units below. It would interfere with views of the river and downtown from more than two residential units, as well as interfering with views from the neighboring Lourdes Square townhomes. It would have far

greater impacts on the use and enjoyment by all residents of the common area terrace and common use activity areas such as the pool, common meeting rooms and exercise room that face the terrace than the common area impact on the northeast side of the building. It would cost more to install, operate and maintain a cooling tower on the Terrance than at the proposed northeast ground level location. Mitigation of noise and the exhaust plume would be required at this location as well.

Ground Level Location

We ultimately determined that the proposed ground level location for the cooling tower at the northeast corner of the property is the best choice overall for many reasons. It will not interfere with traffic flow in the driveway and will have the least visual impact from the public street and sidewalk. We have placed it off of the corner of the building so as to minimize the visual effect on the nearby resident units. The enclosure around the cooling tower will be finished with a brick veneer so that it will blend with the brick condominium building and it will be further screened by evergreen trees. The cost of installation is significantly less and it will have lower ongoing costs for operation and maintenance. It does not pose the structural or vibration risks of the roof and terrace options. Although it will impact the northerly view of residents of Units 201 and 301 somewhat, both units have other balconies with river/downtown views. Noise will be mitigated to meet code standards by sound attenuation equipment already included in the design. The proposed location has the least negative impact on the least number of residents.

Meetings and Communications With Impacted Residents

As previously noted, the energy project has been a high priority for the Board for over two years. Residents are welcome to attend board meetings, have access to board meeting minutes (via email to all residents, posting on bulletin boards and through the association's website), and have been kept informed through special homeowner meetings. In a special homeowner meeting held on October 10, 2013, the Energy Committee first reported that it was looking at ground level options. When the Energy Committee reached the conclusion that the best location for the cooling tower is on the ground at the northeast corner, they convened another homeowners meeting on November 21, 2013. At the meeting, they explained the reasons for their recommendation and showed images of the tower enclosure. The Board approved the ground level location at its meeting on November 27, 2013, which was attended by the owner of Unit 201.

Representatives of the Energy Committee and Board met personally with Mr. Sheehy, the owner of Unit 301, and the owners of Unit 201 on December 26, 2013 and provided them with additional information and drawings of the cooling tower along with view simulations from their north facing balconies (both units also have river views that will be unaffected). Although we do not believe the Association has a legal obligation to compensate the owners of Units 201 and 301 for loss in value of their units due to the installation of the cooling tower, we believe it is the right thing to do and offered to do so at the December 26th meeting. We have subsequently proposed a process using multiple certified appraisers to determine what, if any, diminution of value will occur. The designers are

currently in the process of finalizing the plans for the tower enclosure and sound abatement design. As part of their design completion, a noise map and plume study will be completed to assure that we optimize both noise reduction and exhaust re-direction. The purpose of the plume study with regard to the cooling tower has nothing to do with concerns over visible plume. The purpose is to give the noise reduction engineers optimal information for their design of the exhaust side of the tower and to optimize dispersal of the plume. The moist exhaust air from the cooling tower is to be directed horizontally in the northwest direction so that it disperses into our circular driveway area. The plume air is usually invisible. According to the cooling tower manufacturer, the plume is only visible on the limited number of days each year, typically in the Spring and Fall, when the water vapor it contains condenses in contact with cooler ambient air. The design is intended to further minimize plume visibility by varying outlet air volume to mitigate the difference between plume temperature and ambient air temperature. When these plans and studies are complete, they will be part of the information provided to the appraisers to determine the diminution in value to the units.

Conclusion

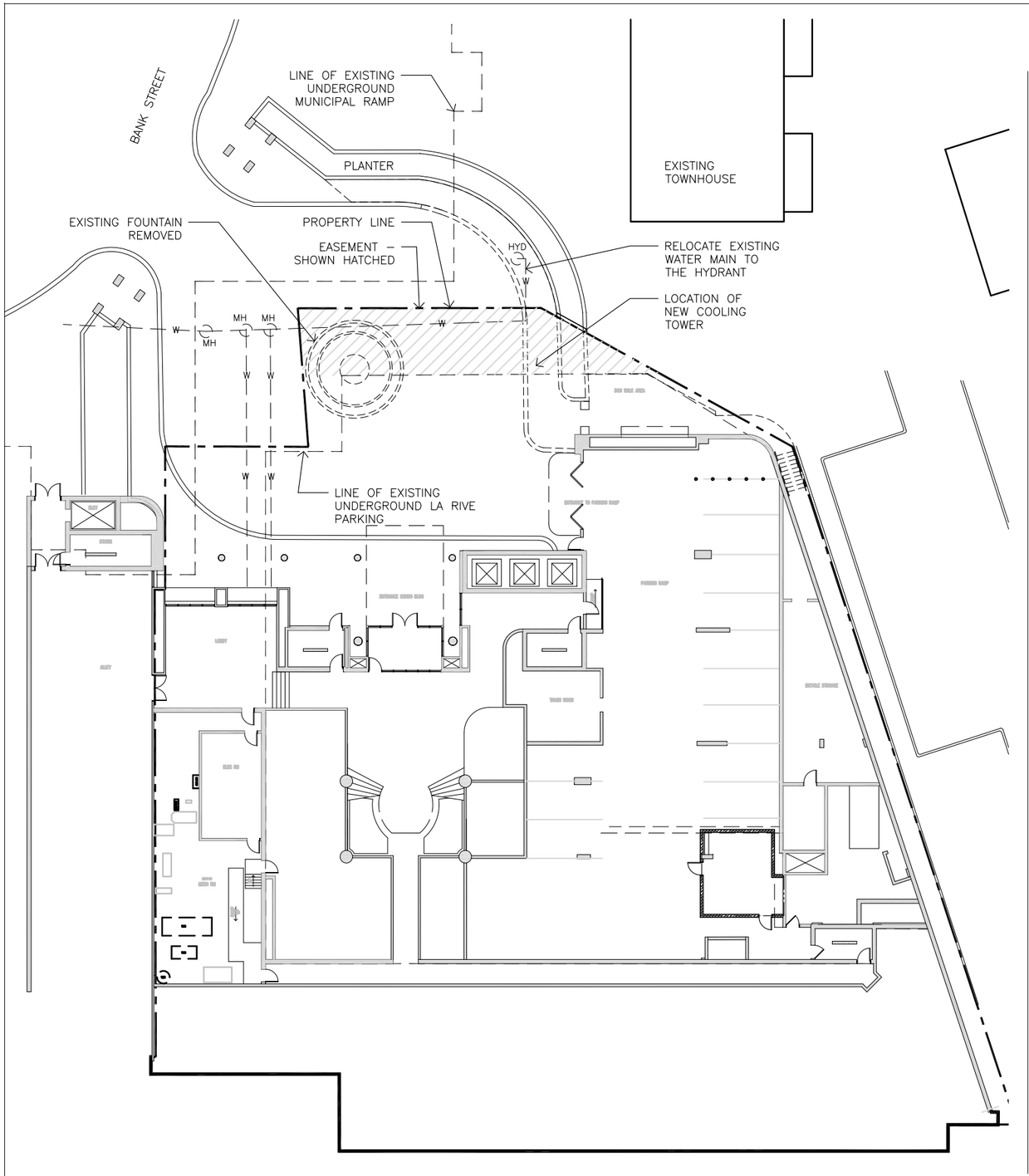
No alternative can satisfy all priorities for all residents and every resident will experience changes due to this project. We feel the recommended option is the best approach to solving a very complex problem. Time is now critical as project construction must begin as soon as possible in order for the new system to be operational before the contract with Sentinel expires. We request that you deny the appeal of the HPC's decision and let us proceed with final design and construction.

Sincerely,

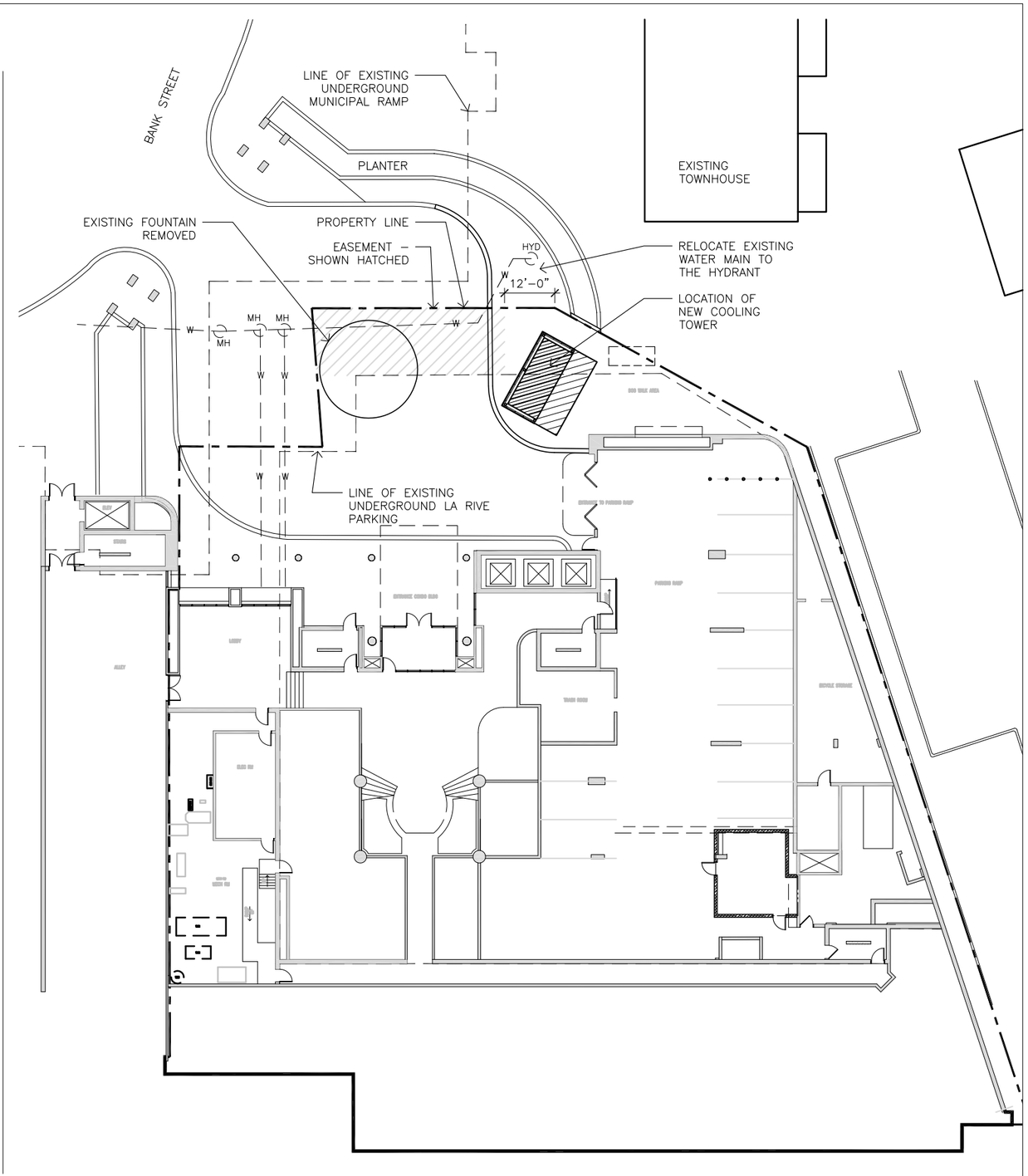
Dixie D Purdom

Dixie Purdom
President, La Rive Condominium Association Board of Directors

c: Council Member Jacob Frey
Lee Sheehy



EXISTING EASEMENT
SCALE: 1"=30'–0"



PROPOSED EASEMENT
SCALE: 1"=30'–0"

LA RIVE CONDOMINIUMS
COOLING TOWER

SITE PLAN
01.16.2014

N

miller dunwiddie
ARCHITECTURE

View from Bank Street **before**.

View from Bank Street **after**.