



## **Sports & Exhibition Authority**

When you have the time, Pittsburgh has the place

### **VIA Hand Delivery**

June 14, 2010

The Honorable Darlene Harris, President  
Pittsburgh City Council  
City County Building  
414 Grant Street- Suite 510/ Floor 5  
Pittsburgh, PA 15219

RE: Civic Arena

Dear President Harris,

You have forwarded to me a copy of the letter you received from Andrea Ferster dated June 9, 2011. We have reviewed Ms. Ferster's letter and wish to provide to you the following in response.

Attached is a communication from William Malley, the SEA's legal counsel with respect to the Federal 106 process and the issue of anticipatory demolition.

With respect the importance of moving forward now, a topic which Ms. Ferster addresses in her second to last paragraph, please allow me to emphasize the following.

**1. ONGOING CARRYING COSTS.** As you are aware, the building has been vacant since August 1, 2010. The SEA is currently spending an average of \$50,000/month (a total of \$421,000 from August 1, 2010 through April 30, 2011) to hold the unused building. This amount will increase at an accelerating rate the longer the building is held because of necessary inspections and safety repairs, factors not part of the base holding costs noted above. The SEA has no dedicated or other funding source for any of these costs.

**2. THE IMPORTANCE OF A SHOVEL READY SITE.** We have been and will continue to seek funding for the costs of infrastructure needed on the Arena site. As you are aware, funding from all sources, whether they be federal, state, foundation or private, is very competitive. Funders are looking for projects that are "shovel ready" and well prepared to succeed. In order for the site to be "shovel ready" for the construction of the infrastructure, the roads must be located and site clearing and grading must be completed. None of this can occur until a final decision about the building is made.



The opening of the new arena has created development momentum that can be built upon, but first a decision about the building must be made to allow the development process to proceed. The SEA has undertaken a deliberate, highly inclusive and responsible study of possible reuses of the building and has concluded that (1) there is no reuse that will not require significant and ongoing public subsidy, and (2) there is no reuse that would not result in a much less effective overall development plan for the site, and one that would actually deter wider investment by developers and lenders. This would make it far less likely that we will ever have development on the Arena site, which has sat undeveloped for 50 years. The SEA encourages City Council to not designate the Arena as historic and allow the development of the Arena site to move forward.

Sincerely,

Mary K. Conturo  
Executive Director

Attachment

cc: Linda Johnson-Wasler, City Clerk



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June 14, 2011

**BY HAND DELIVERY**

The Honorable Darlene Harris, President  
Pittsburgh City Council  
City County Building  
414 Grant Street- Suite 510/ Floor 5  
Pittsburgh, PA 15219

**Re: Civic Arena**

Dear Ms. Harris:

I am writing in response to the letter dated June 9, 2011, from Andrea C. Ferster, counsel for Preservation Pittsburgh and Reuse the Igloo, in connection with the testimony received at the City Council's post-agenda meeting on June 1, 2011, regarding the potential designation of Civic Arena as a historic structure (Bill No. 2011-611).

In her testimony on June 1, and again in her letter of June 9, Ms. Ferster attempts to make the case that if the Authority proceeds with demolition now, its actions could later be considered anticipatory demolition under Section 110(k) of the National Historic Preservation Act (NHPA).

For the reasons I have previously explained, Section 110(k) is inapplicable. Anticipatory demolition can be found only if the demolition was undertaken with the intent to avoid the requirements of Section 106. The Authority's actions reflect a willingness to engage in consultation, not an intent to avoid it. In the absence of an intent to avoid Section 106 consultation, there can be no finding of anticipatory demolition.

I will briefly address the three issues raised in Ms. Ferster's letter of June 9th:

1. The Hulett's case, which Ms. Ferster cites as grounds for concern, actually supports the Authority's position. The Hulett's case involves a fundamentally different set of facts. In that case, the Cleveland-Cuyahoga County Port Authority (Port) was engaged in a federal permit application process, was warned by the federal permitting agency that demolition would likely be

The Honorable Darlene Harris  
June 14, 2011  
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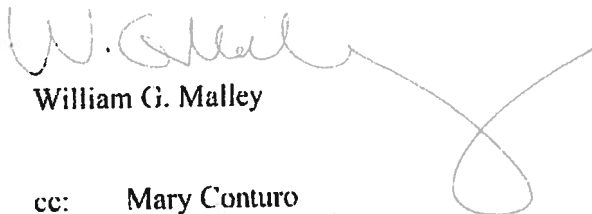
considered anticipatory demolition, and then demolished the building despite the warning from the federal permitting agency. When the Port actually applied for the permit, the federal permitting agency – following through on its earlier warning – found that the Port had engaged in anticipatory demolition. In this case, by contrast, the Authority is not engaged in a federal application process, nor is there any federal process available for the Authority to engage in, nor has a federal agency issued any warning.

2. As I stated at the outset of my testimony on June 1, the Secretary of the Interior has issued “Standards and Guidelines” to assist federal agencies in carrying out their responsibilities under the NHPA. My testimony made clear that the guidelines are just that – guidelines. While not legally binding, the Guidelines are highly relevant here because they show that there is a process for federal agencies to provide an “early warning” when the agency is aware of actions that could be considered anticipatory demolition. The Federal Highway Administration – which would be responsible for approving the use of federal funds for road improvements if such funds ever become available – has been fully briefed and found no basis for becoming involved.

3. Contrary to Ms. Ferster’s assertions, the facts would not support a finding of “anticipatory demolition” in the future, if and when federal funding becomes available. The Authority has engaged in extensive and highly inclusive consultation. The Authority has requested and considered the advice of State historic preservation officials, and it has involved historic preservation and community groups in evaluating options for future development of the Arena site. The Authority arrived at a decision to demolish the Arena only after carefully considering a wide range of preservation options. After the consultation was completed, the Authority reached a decision that there are no economically viable redevelopment options that include preservation of the Arena. The Authority then decided to move forward with demolition, because it determined that clearing the site now is the best way to advance the redevelopment of the neighborhood and to restore this property to a productive use. Based on its actions throughout this process, the Authority is well-positioned to obtain federal funding in the future.

Thank you for the opportunity to address these issues. I would welcome the opportunity to provide additional information about any of the topics covered in this letter.

Sincerely,

  
William G. Malley

cc: Mary Conturo