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December 1, 2004

Ms. Laura D. Rose, Deputy Director
Wisconsin Joint Legislative Council
One East Main Street
Suite 401
P.O. Box 2536
Madison, WI 53701-2536

Dear Laura:

I have read Gregg Hagopian's latest memo and have this response that I would like to have circulated to the Committee.

Sincerely,

MOHS, MACDONALD, WIDDER & PARADISE

Frederic E. Mohs

FEM:kjc
Enclosure

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December 2, 2004

Representative Jeff Fitzgerald
Room 308 North
State Capitol
P.O. Box 8952
Madison, WI 53708

RE: Tax Exempt Housing – Columbus Park

Dear Jeff:

I am addressing this letter to you but having it circulated to our study committee members. Hopefully, at our next meeting, we can examine how to implement the approach that I am suggesting.

Only yesterday, an individual whose name I probably should not reveal, recounted a scheme intended to attach marketrate apartment housing to tax exempt housing operated by a non-profit. I was skeptical, although impressed with the creativity involved in the idea. I mentioned this because our committee needs to understand that developers are on the prowl for ways to get their projects tax exempt. Under the current law, there is almost no limitation on the ingenuity and creativity of real estate developers to join in the gold rush for tax-free housing. Aggressive developers are already in the game while many conventional builders and developers are sitting on the sidelines only beginning to understand that if the legislature does not act in this session, that they will have to compete in the new environment by hooking up with non-profits or developing their own. Unless we are prepared to see a fundamental change in the taxation of residential real estate, the time to act is now.

It would be naive to believe that the developers of tax exempt housing react differently to market demands than ordinary taxpaying businesses. In a few short years, demand for tax exempt senior housing has moved the product from conventional apartment configurations to 2,250 sq. ft. freestanding houses with a price tag of $440,000.00. Because age restrictions are a marketing disadvantage, they have disappeared and now we see only that the houses are "designed for residents in the

50+ range." To the developer, this is great. Now the children can move into a half million dollar house right next to mom and dad where they can all live in tax-free bliss.

And if anyone believes that the financial arrangement where 90% of the deposit, in this case ($440,000.00 - $44,000.00 = $396,000.00), is returned to the resident is immutable, I urge them to think about this further. Equity sharing formulas will be changed just like the elimination of age limits. Competition will predictably result in the owners and developers sharing appreciation and probably also modifying the proportion of the deposit return to be more favorable to the resident. Non-profit developers deprived of part of the income stream that they had originally been able to obtain will certainly find other means to profit, including construction profit, the lease of amenities, long term management fees, etc.

Just today, I received a report on a 56 unit building in Stevens Point sponsored by a corporation associated with Lutheran Social Services of Wisconsin who claim their property is a "retirement home for the aged." The only requirement for living in the building is that one member of the family must be 55 years of age or older, but there is more. There is no benevolence involved. All of the profits are used for maintenance of the property and for construction debt retirement. They do not set aside any units for low or moderate income people, they do not discount the rent for anyone based on income or need. We should ask why the City of Stevens Point should be giving up $75,000.00 in revenue each year for what is essentially a high-end apartment house.

The market is also operating in the low income housing arena. The advantage of operating without income tax consequences and also of being relieved of paying real estate taxes is so profound that it will be easy to predict that not only will currently taxable low income properties will be sold to tax exempts, but that all new low income housing will also be tax exempt. Tax exempt developers will increasingly be able to argue that they need to be tax exempt because the market for low income is so fundamentally changed that they can now compete without it. Almost without noticing, local communities that have low income housing will have been forced into deep subsidization when just a few years ago, the same type of property paid property taxes.

For instance, in Madison, the Tishman Group, owners of the 246 unit Wexford Ridge Apartments near Memorial High School, contested its assessment of over $7 million in 1999. They finally resolved matters with the Madison Assessor at an agreed upon value of $6,725,000.00 . That same year, the Tishman Group sold the property to Forward Madison, a non-profit, for $7,380,000.00, or $655,000.00 over the agreed upon value. Tax exemption is supposed to bring about public benefit, but in this case, it appears that part of that benefit was shared with Tishman. The increase in value created by escaping taxation is probably $2 million at today's capitalization rates. Our committee needs to understand where the benefits of that increase in value are going in order to justify taking them away from local governments. Inadvertently, the current policy is taking pressure off of the federal government to support to the poor and has resulted in those burdens being spread randomly wherever communities have low income housing projects. Communities will want to come back to the State to recoup what they have lost. Our committee needs to examine if this is the most effective approach to supporting low income housing.

The point of this letter is to encourage the members of our committee to look forward with the same vision and creativity that the developers of tax exempt housing possess. If we can agree upon the goal of maximizing the tax base and creating an environment where taxpayers feel that they are being treated equally without having to rely on alleged, but unproven, benefits, we will have a useful base for our discussion. What I am proposing is a zero-based model that would assume that all housing must be taxed and then examines other governmental approaches to supporting existing tax exempt housing that will be equivalent to the public good that is being produced. If we do not embark upon this suggested approach, I fear we will be trapped by the unplanned and ad hoc tax exempt housing situation that now exists. All attention will be focused on trying to craft exemptions that cover existing housing operations which will predictably produce a hodgepodge of requirements that will once more only tempt circumvention.

Sincerely,

MOHS, MACDONALD, WIDDER & PARADISE

Frederic E. Mohs

FEM:kjc