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November 1, 2016

VIA EMAIL AND CERTIFIED MAIL

Karen Hacker, M.D., M.P.H., Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh PA, 15219

Re: Heinz Loft Apartments
Notice of Appeal/Request for Consolidation
October 25, 2016 Notice of Violation

Dear Dr. Hacker:

We represent Progress Street Partners LTD ("Progress St."), the owner of the Heinz Lofts Apartments. Pursuant to Article XI of the Allegheny County Health Department's ("ACHD") Rules & Regulations, this letter serves as Progress St.'s Notice of Appeal of the ACHD's groundless October 25, 2016 notice of violation ("Notice of Violation") attached hereto as Exhibit "A."

Relevant Background

On September 29, 2004, the ACHD issued an adjudication approving a variance to Section 912 of the ACHD's Rules & Regulations to operate a 98 square foot lap pool that is *less than 4 feet deep* ("Swim Spa") without a lifeguard. For the next 12 years, the Swim Spa was used and operated without a lifeguard 24 hours a day 7 days a week without incident.

On July 15, 2016, the ACHD determined that its adjudication from 12 years earlier was null and void and that a lifeguard was required in order to operate the Swim Spa ("Determination"). On July 25, 2016, Progress St. filed a timely appeal of the Determination.

On September 14, 2016, Progress St. filed a request to stay the Determination pending the appeal, which set forth a number of compelling reasons why Heinz Lofts' 342 residents should be able to continue to use the Swim Spa. On September 28, 2016, the ACHD denied the request. The Swim Spa has been drained and closed for the past two months.

On October 17, 2016, the ACHD scheduled the hearing on Progress St.'s July 25, 2016 appeal for January 17, 2017.

Notice of Violation

On October 18, 2016, the ACHD conducted an inspection and confirmed that the Swim Spa was drained. See Ex. A ("Comments: *Pool is drained. . .*"). Notwithstanding this, the ACHD found that Progress St. was in violation of Section 912 of the ACHD's Rules & Regulations because "no certified lifeguard(s)" were on duty.

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Although the ACHD inspector physically inspected the Swim Spa to confirm that it was not operational, the Notice of Violation also inexplicably indicates that Progress St. is in violation because it did not allow the inspector with access to the Swim Spa.

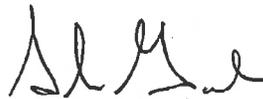
The Notice of Violation provides that, in order to remedy the violations, Progress St. must cease operation of the drained Swim Spa and provide one or more certified lifeguards to watch over the bone dry pool.

Notice of Appeal/Request to Consolidate

Progress St. files this appeal as a protective measure and requests that it be considered with the pending July 25, 2016 appeal at the January 17, 2017 hearing. To state that the Notice of Violation is arbitrary, capricious and constitutes a manifest abuse of discretion and error of law is a gross understatement.

The ACHD's enforcement action for nonexistent violations appears to be in retaliation for Progress St. filing the underlying appeal and expressing its belief that the Housing and Community Environment Program's position is misguided and unreasonable. If so, this could constitute a violation of Progress St.'s constitutional rights under the First Amendment.

Very Truly Yours,



Shawn N. Gallagher

Encls.

cc: All Via Email
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Max Slater, Esq.
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