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April 23, 2009

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Mr. Peter Mason, Mayor
Mr. Dave Burow, Mayor Pro Tem
Councilmembers:

Ms. Deborah C. Gordon
Ms. Susan Boynton
Ms. Carroll Ann Hodges
Mr. Dave Tanner
Mr. Ron Romines

Ms. Susan George, Town Manager
Ms. Jackie Young, Planning Director

WOODSIDE TOWN HALL

TOWN OF WOODSIDE

2955 Woodside Road
P.O. Box 620005
Woodside, CA 94062

Re: Application for Demolition of Jackling House: 460 Mountain Home Road

Dear Mayor, Mayor Pro Tem, Members of the Council, City Manager & Planning Director:

I represent Steve Jobs, the applicant for the captioned permit. I oppose the request for continuance and respectfully ask the Council to consider and act on the matter as scheduled, at its meeting on April 28, 2009.

A. The Request for Continuance Should be Denied.

The request for continuance filed by Ms. Luce admits that Uphold Our Heritage ("UOH"), the organization asking for the continuance, has had the operative documents on which Mr. Jobs' request for reconsideration is based since "late 2008." In fact (as your Staff and outside counsel can affirm), Mr. Jobs requested that the Town entertain reconsideration of the demolition permit in the summer of 2008. Mr. Jobs' consultants had filed most of the documentation upon which he based that request by early August 2008. I understand that UOH

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received copies of those documents from the Town at about that time. In any case, it could have satisfied itself that it had received copies of all the documents by the simple expedient of filing a Public Records Act request – which it apparently did not do, although such a request was filed in December of 2008 by a person who may be affiliated with UOH.

Whether UOH filed that PRA request (to which the Town responded) or sat on its rights, UOH now claims that it needs more time to prepare for a hearing, even though Ms. Luce's request includes fairly detailed arguments with the information provided on Mr. Jobs' behalf.

Mr. Jobs should not be penalized by further delay and the hearing should proceed as scheduled. Bear in mind that the issue involved in this proceeding *has effectively been pending before the Town since February of 2001*. All relevant information has been before the Council and the public for more than enough time.

B. Defining The Issues: Responding To The Defect In The Record On Which The Court Based Its Decision.

Mr. Jobs requested reconsideration of his demolition permit application based on information he offered to fill the gap in the record identified by the Court of Appeal in the UOH litigation. The Court of Appeal affirmed that part of the trial court's decision holding that the record before the Council on December 14, 2004 lacked "substantial evidence" to support rejection of alternatives 2 (restoration in place) and 3 (restoration with additions) as economically infeasible. Without information in the record as to the cost of the smaller residence that Mr. Jobs proposed as his "project," the Council had no substantial evidence to support its determination that the cost of restoring the Jackling House was disproportionately burdensome. Mr. Jobs has supported his request for reconsideration by providing that information, based on the plans for his residence now pending before the ASRB.

As part of that analysis, Mr. Jobs asked his consultants to evaluate and bring up to date the cost information provided in the EIR with respect to the alternatives. The EIR information

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dated back to 2003 and was compiled apparently without detailed analysis by professional cost estimators, based on realistic sets of engineering drawings and architectural plans.

The marketing exercise in which we engaged to comply with the terms of the December 14, 2004 permit (and in the effort described in Section C below) confirmed the view that the EIR cost estimates were materially understated – as everyone who seriously examined restoration came up with much higher numbers. Moreover, they did not provide a basis for a proper comparison that fit the Court’s mandate, *i.e.*, a “high-end” restoration for single family residence use (the “project purpose”) with the “high-end” home that Mr. Jobs proposed. For that reason, we have submitted the results of an in-depth analysis (design plans and a detailed cost estimate) to serve as the comparative case and the basis for your consideration of “economic feasibility.”

With the information on the cost of Mr. Jobs’ proposed residence and the cost that would be incurred to restore the Jackling House as a contemporary residence, the Council has more than substantial evidence to support the findings required to reissue the demolition permit in compliance with the Court’s decision. That gets to the second issue before the Council: whether to issue the permit in the face of the historic preservation arguments that the House should be saved in order to preserve the opportunity to restore it as an “historic resource.”

C. Defining The Issues: The Reasons Why The Council Should Vote To Reissue The Permit.

First and foremost, *denial of the permit will not preserve the Jackling House*. No law can be invoked to compel Mr. Jobs to restore it, either on-site or off. I made that point on his behalf in the proceedings that culminated in the December 14, 2004 permit. No one has refuted it or cited any law to the contrary. Indeed, the Court of Appeal acknowledged the argument and assumed it to be true, but concluded that it was irrelevant to a finding of infeasibility of alternatives as required by the California Environmental Quality Act.

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Moreover, the House is not uniformly recognized as an “historic resource.” It is not so listed on any official register, federal, state or local. The preservationist community has apparently made no effort to have it officially so listed during the eight years and three months that this demolition permit has been pending. As the owner, Mr. Jobs would have received notice of any such effort – and he has received none.

The Town adopted an Historic Preservation Element for its General Plan on March 10, 2009, and mentioned the House only in passing as an example of a “notable estate” of it’s period (p.3) – which could as easily have been a reference to the size of the holding at that time (more than 100 acres) as to the House itself. In any case, the Element did not identify the House among the structures and locations of historic significance beyond that reference, nor did it provide a formal mechanism for creating a special listed status for the House or other structures claimed to have “historic” status.

Recognizing the limitation on its powers actually to compel restoration, the Council conditioned the December, 2004 permit on the requirement that Mr. Jobs market the House for a year in an effort to find someone who would relocate and restore it. Testimony questioning the extent and sincerity of those efforts will apparently comprise a major share of what you will hear on April 28th from the preservationist community. Bear in mind that the Court in the UOH litigation did not have before it evidence as to the results of the marketing effort undertaken after issuance of the permit because that was not part of the initial administrative record. I submit that those results are relevant, probative (for the reasons stated below), part of the record before you now, and further demonstrate the infeasibility of any of the restoration alternatives.

Let’s start with a general proposition to put this issue into perspective: why would Mr. Jobs reject any viable businesslike proposal to relocate and restore the Jackling House when such a relocation and restoration would (i) allow him to proceed with his plans for his smaller, single-family residence; (ii) preserve the House; (iii) have rendered the litigation unnecessary in

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the first place, or have provided a quick basis for settlement of it if it had already been filed; and (iv) have spared the Staff of this Town and its Council the burden of dealing with a contentious and divisive issue?

The question answers itself. *He would not and did not.* His instructions to me were clear and unequivocal – “try to make it happen” – and I can assure you that I did.

And those efforts must be considered and evaluated within a directly relevant temporal framework: the period beginning January 2005 through calendar year 2007 witnessed the most undisciplined real estate loan market in living memory. During that time (and to our current chagrin as a society), lenders outdid each other to provide 100% financing for all manner of aggressive and risky projects. *If no one could make a viable proposal during that period for lack of adequate financing, no one will be able to do it now when the exact opposite mortgage market conditions obtain.* The marketing history and current conditions tend further to demonstrate that relocation and restoration alternatives are not economically feasible in today’s environment, indeed if they ever were.

Ms. Luce has submitted a letter in which she cites a few examples of various proposals and characterizes them as viable *without offering you a single document to suggest that any of the parties she named ever made a definitive offer or a plausible and complete relocation and restoration proposition.* Since December 14, 2004, no party has made such an offer that I received – and I was the person designated to receive all proposals with respect to restoration of the Jackling House.

Such an offer would not have been complicated. It would have required the offeror to (i) identify an appropriate relocation site of sufficient size to accept the House that was available and could be obtained; (ii) show some evidence that permits could be obtained to reconstruct the House on that site; (iii) show the skill and experience required to move the House and perform

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the work; and (iii) demonstrate the ability to finance the work or most of it (with that ability and budget precisely defining the contribution expected of Mr. Jobs). With that background I will summarize some of the most serious proposals to which I devoted substantive attention and that seemed to have promise at the time.

Even before the Council voted to issue the initial demolition permit in December 2004, I received an overture from a prominent Woodside citizen who had successfully relocated and restored other historic houses. I had known the man personally and professionally for more than 25 years and knew him to be bona fide in every respect. He had the experience, the expertise and a potential site for the relocation and restoration. Based on his track record, he had reason to believe that he could obtain financing and he had a commitment from a prominent equity investor for a significant portion of the money required.

Before he could complete his due diligence and make an offer, however, a private airplane accident took the life of his equity investor. He could not make up the financing deficit caused by that tragedy and lost the potential relocation site while trying to do so. That was the end of that, unfortunately, as it proved ultimately to be the prospect with the most promise.

A pair of individuals from Berkeley with construction experience and some experience in restoration spent months analyzing the project, exploring the requirements and estimating costs. They spent several hours at the Town conferring with Hope Sullivan and Town Counsel discussing the requirements. They appeared both interested and competent. At the end of the day, however, they could not identify a relocation site, and ultimately made a proposal for an exclusive right to *attempt* to find an alternative site for a term of two years, at which point they would demolish the House, store the important components and try to restore it – with Mr. Jobs to pay them a \$2.5 million fee for their efforts. I terminated further discussions – as assurance of *restoration* always constituted a critical component of any acceptable proposal, if we were to have any hope of settling the UOH litigation.

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Ms. Luce's letter mentions Gordon Smythe. Mr. Smythe spent months trying to put together a definitive proposal, analyzing the House, costs and all of the legal requirements. He ultimately withdrew when he could not identify a feasible alternative site. I give Mr. Smythe an "A" for effort, candor and professionalism – but in the final analysis, he had nothing more to offer than a request that Mr. Jobs pay him a fee and he would continue to try to find an acceptable site, protected by an "exclusive dealing" agreement that would have precluded consideration of any competing offer.

Ms. Luce takes issue with my statement that I attempted to work with UOH in identifying a likely relocate-and-restore candidate as a means of settling the case and solving all the issues to which I referred at the outset of this Section, because I only referred them to Mr. Smythe. I asked Doug Carstens, her lawyer in the case (with whom I had a good professional relationship), to set up a process for vetting proposals that might be made – *because it made no sense to consider a proposal if it wouldn't result in a resolution of the litigation*. I promised Mr. Carstens that I would not waste his time with proposals lacking in substance. Mr. Smythe was the only person with a proposal of substance who came forward after Mr. Carstens and I had that discussion.

Ms. Luce also mentions the case of Paul Berger. Despite writing me a series of carping communications claiming that I was not responding to him, *Mr. Berger never made a definitive written proposal to remove and restore the House*. In frustration, I finally sent him an email in which I stated what I understood his proposal to be: Mr. Jobs would (i) pay for a supervised salvage demolition of the House to save the historic components at Mr. Jobs' expense, (ii) pay the cost of moving the components to a lot Mr. Berger owned, and (iii) pay all the costs of construction and restoration. Mr. Berger would contribute \$1 million. He would then own the House to use as his personal residence, or sell it and provide Mr. Jobs with some unspecified percentage of any profit obtained, apparently at his election. Mr. Jobs' investment in this "plan" would probably have exceeded \$14 million, basically a "gift" to Mr. Berger. Mr. Berger

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responded to my email with an email of his own in which the first four words were: "Essentially, you are correct" (I have copies of that exchange that I will be happy to share with you).

Is there any one of you who would accept Mr. Berger's proposal if you were in Mr. Jobs' place? Why wouldn't Mr. Jobs do it himself in such a case, leaving Mr. Berger out of it? In dealing with this matter, I have Ms. Luce at a disadvantage: I have all of the correspondence from Mr. Berger and my responses in my file.

I won't add length to this letter by chronicling other proposals that appeared to have promise at the outset but were either quickly withdrawn or showed critical flaws. One is noteworthy enough to deserve mention, however. Mr. Jobs recently received a direct inquiry from the State of Utah to take the House and make it part of a mining museum being promoted in part by Kennecott Copper, the successor to the company with which Mr. Jackling had been associated. After due consideration, Kennecott decided that it did not want the house despite ample resources available to relocate and restore it, and a substantial historical interest in Daniel Jackling.

Wholly apart from whether any of this is or should be relevant at this stage – after eight years and three months – one salient point stands out: *neither UOH nor any member of that organization, nor the National Trust for Historic Preservation, nor any person sponsored by that organization, have at any time stepped forward with a constructive proposal for relocation and restoration; nor have any of them sponsored an individual to undertake that task based on a definitive proposal.*

Under the circumstances, I respectfully submit that you should reject their effort to enlist you as accomplices in attempting to coerce Mr. Jobs to do something on his own property that is repugnant to him and that no law compels him to do – and that frustrates his efforts to make a

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lawful and constructive use of it as a residence suitable for his family in compliance with all the Town's current codes.

D. The Condition of the Improvements and the Cost of Restoration:
The Cost of the Residence Mr. Jobs Proposes to Build.

Finally, Ms. Luce's letter takes issue with cost information we have provided, referring to a "Judd Report" allegedly commissioned by the Town. The Judd Report is not a cost estimate report at all but guidelines for relocation of an historic structure. It does not purport to be a detailed and in-depth estimate of the costs of restoring the House.

The cost information submitted on Mr. Jobs' behalf in connection with the pending request was prepared on the basis of plans and analysis done by a noted architect who has designed many residences in the Town, with costs estimated by a skilled estimator who is also a licensed general contractor. Those estimates and plans were the product of detailed and in-depth analysis of the structure, mechanical, electrical and plumbing systems of the House.

But in any case, arguments with the costs we have submitted simply come down to a contest over the evidence, a determination vested in the sound discretion of the Council. I respectfully submit that the evidence submitted on Mr. Jobs' behalf is more current, more detailed, more professionally prepared, and more credible.

And there's a larger issue here. *After eight years and three months spent in an attempt to obtain what is normally considered a ministerial permit, isn't it time to allow a citizen of this Town to make lawful use of his property? Isn't it time to demand that those who stand in his way deliver something beside rhetoric to demonstrate a commitment to their agenda? If the House is so significant, why have they not produced someone – anyone – to make a clear, definitive and soundly based proposal to relocate and restore it? If they couldn't or wouldn't do it when the market was overflowing with easy money, how can anyone expect that to happen today?*

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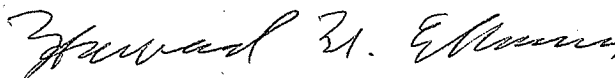
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The record now contains ample evidence to support a grant of the demolition permit, on reconsideration, to fill the holes that the Court of Appeal found in the record of your action in December of 2004. I respectfully request that you make the findings that the alternatives are economically infeasible, that the general plan provides ample support for a permit that will promote open space, replace an oversized structure with one that conforms to current reduced size limits – and where the restoration policies in the general plan were given a fair try in this instance and found infeasible.

Thank you for your consideration.

Very truly yours,



Howard N. Ellman

HNE/flf

cc: Jean Savaree, Esq.
Anna Shimko, Esq.
Mr. Ken Morrison