



CITY COUNCIL AGENDA ITEM

Date: October 12, 2016

To: Brian Kischnick, City Manager

From: Maggie Hughes, Management Analyst
Mark Miller, Director of Economic and Community Development
Paul Featherston, SAFEbuilt Building Official
Mitch Grusnick, Building Official and Housing and Zoning Inspector

Subject: Staff Response to Safety Concern

Summary

On October 11th the City Manager's Office received the following email from Ms. Jonelle Bunch.

“Dear Mr. Kishchnick

I am writing you today because of concerns I have about a child fall hazard in Somerset Mall. Please see the photos I have provided below. These photos were taken at Somerset Mall on the South side 2nd floor. There is a sitting area after the walkway. In this sitting area, there are built in padded benches, behind the benches is a granite white step and then a railing. Beyond the railing is open to a drop down to the 1st floor. The distance from the step to the top of the railing is about a foot, making it easy for any child to climb on the benches, then the step and then proceed to fall over the rail to the 1st floor. Additionally, that ledge around the flower gardens could also be climbed on by a child and they could fall over the railing from there as well. Furthermore, from certain angles it is not completely visible that there is a deadly falling hazard with no floor behind the railing. From certain angles a person can only see the side walls and the plants below, leading someone to not realize there is an opening at all.

I have been on the phone and emailing people. Unfortunately I have found no one who could help with this situation. On Tuesday October 4th, I spoke to a manager at Somerset Mall, John Mizack. He informed me that he could not baby proof the whole mall. I kindly told him that I was not asking him to baby proof the whole mall, however this is a seriously deadly falling hazard. An attitude of ‘we can't fix everything, so we're not going to fix anything’ is a disservice to all. On October 7th, I spoke to Paul Featherston in the Troy City Hall building department and Charley Curtis at MiOSHA who both informed me that the design is "to code". When I asked what the code said Mr. Curtis told me that the railing had to be 42 inches from the floor. To which I said "Exactly, 42 inches FROM THE FLOOR! In this design the railing is 12 inches from a white step." Clearly, this design has the railing placed 12 inches from the white

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step and ledge. Without a doubt, the code of 42 inches was made to ensure safety to the public, having the bench and the white step and ledges makes the design no longer in compliance with the purpose of this code. If the codes are allowed to be used in such a way that builders, architects, and designers are permitted to veer away from safety, it defeats the purpose of the codes. It is morally and ethically wrong to say a dangerous design is “to code” and then turn a blind eye to an obvious safety hazard.

This is why I am asking for your help. I believe that the original author of the code expected people to use safety, care, and above all common sense in their design. Really it is not about the codes, it's about common sense. The codes should never supersede common sense. It is about sparing a family a lifetime of grief and regret over the death of a child. It's not a question of “if” it will happen. It's really just a question of “when”. The reactions I received from some of the individuals I spoke to are “well, parents should be watching their children.” Yes, I completely agree, people should always be watching their children, however I do not think the parents who are momentarily distracted deserve a lifetime of grief and regret as a punishment. Even the best of parents have moments of distraction, moments when they are not as observant as they could be, and moments of poor judgment. When people go to malls they expect the environment to be relatively safe. I fear for the children that get lost in Somerset Mall. I fear for the parent that goes to the mall with 2 or 3 children, and has an armful of bags, and does not expect a hazard like this to be in their path. I fear for the mother who is looking for a peaceful place to sit and does not expect a safety hazard to be in close proximity. Anyone who has children can tell you children jump and climb all over everything. Children push, they fight, and they act rambunctiously. Children act without thinking, and children step without looking.

Here are two possible suggestions to make this area safer.

1. Remove the benches, granite step, and side gardens so there is no way for a child to elevate themselves to go over the rail.
2. Close the hole in the floor all together and replace it with a garden, a statue, or some art.
3. Raise the height of the wall.

It is my hope that something will be done to make this area safe for children and families.

Children and families deserve to be able to go to a safe place. People deserve a government that is truly looking out for their safety and best interests.

Thank you for your time.

If there is anything I can do to help this process please let me know.” (photo below)



This letter was in addition to multiple phone calls over the course of one week to the City Manager's Office, Clerk's Office, Building Department (as well as The Michigan Occupational Safety and Health Administration - MIOSHA), and Police Department.

Ms. Bunch's perceived concern can be summarized as such: she believes that children are at risk of climbing from the seated area, onto the raised ledge, and over the rail falling from the second to the first floor. She believes that the building code *must* regulate that a structure that could be used to climb on, cannot be next to a railed area therefore the above photo represents a violation.

Multiple conversations with the building officials have confirmed that the rail guard meets the building code and that the bench location near the rail guard is not regulated by code. Ms. Bunch has been made aware that there is no violation but elected to file a Freedom of Information Act to obtain the information for her own record.

Taking a proactive approach to the matter, on October 11th Mitch Grusnick arranged an impromptu on-site meeting with Somerset staff including the building owner, general manager, and interior design manager. Mr. Grusnick agreed that there could be a potential safety hazard and asked to work with the Somerset team for a solution. Somerset, as a cooperative and willing partner, elected to design and install fixed metal planter boxes across the top of the marble slab between the bench and rail. This will provide a barrier between the seated area and the railing/opening to the first floor mediating the safety concern. As of October 12th, Somerset staff have placed temporary planters (see

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below) across the marble slab which will remain in place until the permanent planter are fabricated and available.



I spoke to Ms. Bunch on the afternoon of October 11th to share our resolution. It is my impression that short of removing the bench or raising the height of the railing, Ms. Bunch will not be satisfied with our answer. Although she agreed to withhold her final judgement until the planter is installed, she already raised additional issue with the planter solution and asked for an expedited process that we cannot offer her. She replied via email on October 12th to the temporary planters stating that “this is a start. However, they need to deal with the gaps on the sides of the planters and between. Also the ledges on the side garden on this structure still need to be addressed.” I would reiterate that Ms. Bunch will not see compromise in any of our solutions.

She has previously informed me that she may be contacting City Council or attending the October 24th meeting to bring forward this issue. She was not clear as to what action she would be looking for from you. Staff is more than satisfied with the solution Somerset agreed to. We feel that there is nothing more within our power to do and we believe we were patient and as cooperative as possible given the extremely persistent nature of her contact.

If you have any additional questions please let us know.