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**COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, December 9, 2003**

PRESENT: Aids. Becker, Ecks, Heins, Herzog, Kopischke, Krol, Sullivan, Treis -8

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Lori Nielsen,
PRESENT: Public Health Nurse Supv.; Jennifer Stohler, Bioterrorism Coord.

Ald. Heins in the Chair called the meeting to order at 8:24 p.m.

Certified Survey Map – 10340 Watertown Plank Road

The committee reviewed a request by Milwaukee County for a certified survey map in the Municipal and Public Works District at approximately 10340 Watertown Plank Road. Ms. Welch said that this is a land division by means of a certified survey map that will create a parcel for construction of Wisconsin Lutheran College's stadium and playing fields for which the city has already granted a Conditional Use. The county is still working out some fine points of the map regarding an easement on the property that they now wish to show as an out-lot. Staff supports the request, and the Plan Commission unanimously recommended approval.

The Chair announced that she will not participate in discussion of this item and will abstain from voting on any motion due to her employment by Wisconsin Lutheran College.

Duane Schloemer of Wisconsin Lutheran College said that the out-lot area is a permanent easement that goes with the 26 acres being purchased directly. The two areas will be operated as one with a decorative fence along the parkway unifying the properties. There will be playing fields on both portions.

Asked about city costs, Ms. Welch said that the fee paid by the applicant essentially covers all costs. The city does not do the survey but simply reviews it for conformance with city standards.

Moved by Ald. Sullivan, seconded by Ald. Kopischke to recommend
to Council approval of the certified survey map. Ayes: 7; Present: 1
(Heins)

Conditional Use – 12201 W. North Avenue

The committee reviewed a request by Scott Marquardt for a Conditional Use in the AA Business District at 12201 W. North Avenue to sell secondhand merchandise. Ms. Welch said that the applicant's business, Truly Timeless Treasures, has been in operation for several months as a seller of sports cards and other collectibles. Staff just recently became aware that the business also purchases and sells vintage sports cards, collector coins, and other collectible items that are considered secondhand merchandise. The Plan Commission unanimously recommended approval of the Conditional Use. The applicant was present.

Moved by Ald. Treis, seconded by Ald. Becker to recommend approval of the Conditional Use. Ayes: 8

Zoning Code Amendment – Indoor Electric Go-Cart Tracks

The committee reviewed a proposed ordinance amending Section 24.34.020 of the Code by adding indoor electric go-cart tracks as a Conditional Use and Section 24.34.030 specifying outdoor go-cart tracks as a prohibited use in the AA Light Manufacturing District. Ms. Welch noted that all go-cart tracks are currently banned. This ordinance establishes only indoor electric go-cart tracks as a Conditional Use. Plan Commission recommended approval by a 4-1 vote.

Moved by Ald. Treis, seconded by Ald. Becker to recommend adoption of the ordinance. Ayes: 8

Conditional Use – 12132 W. Capitol Drive

Ms. Welch outlined a request by Robert and Sandra Lacourciere for a Conditional Use in the AA Light Manufacturing District at 12132 W. Capitol Drive to operate an indoor electric go-cart track. Plan Commission unanimously recommended approval contingent upon adoption of the foregoing ordinance. The Plan Commission also discussed requests from police regarding fencing at the adjacent railroad tracks and having a controlled entry and exit point. Approval was also contingent upon measures to encourage compliance with the city's 11 p.m. curfew for those under age 18.

Bob Lacourciere, 4665 Hastings Drive, Brookfield, said he owns the property and will own the proposed business. He plans to install fencing along the railroad tracks in conjunction with extensive interior and exterior remodeling to bring the building in line with other recent developments in the area. He said that entry and exit to the facility will be controlled with an electronic card system, and he will discuss the curfew issue with police. He felt that he would be able to address the concerns raised at the Plan Commission meeting. He indicated that the facility would include family activities such as a climbing wall, modified bowling lanes, light food service, a soft play area, and a small arcade area.

Moved by Ald. Sullivan, seconded by Ald. Kopischke to recommend approval of the Conditional Use contingent upon hours of operation from 8 a.m. to midnight daily, measures to encourage compliance with the city's 11 p.m. curfew for teenagers, and approval of the required zoning change –

In response to questions, Mr. Lacourciere said that the go-cart track would occupy in excess of 20,000 square feet but would have only about 10 users at any one time. He estimated there would be a total of 100-150 individuals on the premises on a very busy day. He has been working with consultants and hopes to have everything set up by next April or May. Ms. Welch said that there is adequate parking with 108 spaces available.

Vote on the motion, Ayes: 8

Mutual Aid Agreement – Milwaukee/Waukesha County Consortium for Emergency Public Health Preparedness

Lori Nielsen, Public Health Nurse Supervisor, reported that a public health mutual aid agreement is one of the objectives under the city's 2003 bioterrorism grant. The 14 participating health departments in the Milwaukee/Waukesha County Consortium for Emergency Public Health Preparedness are currently working

together informally during emergencies, as evidenced during the monkey pox outbreak in June. The proposed agreement would formalize the relationship and expectations, similar to existing police and fire mutual aid agreements. There is no cost to the city. Cudahy, Oak Creek, and Shorewood-Whitefish Bay have already approved the agreement. It has been reviewed by the city attorney's office and includes a hold-harmless clause.

City Attorney Kesner said the agreement has also been reviewed by the city attorneys of the five or six entities that had an active role in crafting the language. He added that the only difference between this document and existing police and fire mutual aid agreements is that much of the police and fire terminology is defined by state statute.

Moved by Ald. Treis, seconded by Ald. Krol to recommend to Council approval of the proposed mutual aid agreement –

Ald. Ecks said that it is worthy of note that our health department is the lead agency and fiscal agent of this consortium, which includes two counties and 12 municipalities including some much larger than Wauwatosa.

In response to questions from Ald. Herzog, Ms. Nielsen noted that the grant establishes objectives and financial advantages for all 14 entities to participate, although it is to Wauwatosa's advantage to participate regardless of how many others choose to do so. Senate Bill 120, which is pending, would address mutual aid on a statewide level, she said, but this agreement would get a jump on that process.

Vote on the motion, Ayes: 8

Zoning Code Amendment – Non-Conforming Properties

The committee reviewed a proposed zoning code amendment regarding non-conforming uses, structures, and lots. Ms. Welch estimated that there are over 8,000 Wauwatosa properties that do not meet setback, lot size, or certain other requirements and are thereby considered non-conforming. That designation places limitations on maintenance, repairs, or additions, even though many of the properties are among the finest in the city. A Special Use must be granted when owners wish to add onto those properties. The proposed zoning code amendment addresses those concerns, primarily in connection with residential properties, by making it possible for property owners to add on, repair, and maintain their non-conforming properties under the same criteria used in granting Special Uses, i.e., they cannot increase the non-conformance. This will also allow the city to provide a rebuild letter to banks confirming that it is acceptable to maintain or rebuild the property, resolving a problem that some were having with loans. Ms. Welch anticipated that the proposed amendment would address issues for about 90% of the properties.

Ms. Welch reported that the proposal has been reviewed by the Plan Commission and recommended for adoption with some changes. She noted that one section of the amendment allows for averaging setbacks along street frontages. If a home burned down, averaging the setbacks in that block would allow rebuilding with a setback frontage that is more consistent with what already exists in the block. Although the Plan Commission had some concerns about the section on commercial properties, Ms. Welch clarified that it is not the intention to suddenly say that all of the non-conforming commercial properties are acceptable since there are some that may not be. There would be some limitations, therefore, on repairs, maintenance, or additions. Some of the concerns were with properties along North Avenue, which may be addressed in the future through adoption of a Trade District ordinance. The Plan Commission suggested changing language on existing nonconforming structures by removing reference to "principal structure lawfully existing on February 1, 1972", thereby providing greater flexibility. That section could be changed to read "city market value," which Mr. Kesner said relates to how the DNR calculates value for shoreland zoning.

Ald. Herzog felt that Sec. 24.50.070, titled "Existing non-conforming lots" should include "undeveloped" in the title. He questioned the provision in that section that would allow a single family dwelling to be built on a vacant non-conforming lot when that lot cannot be consolidated with an adjoining one. Ms. Welch said that it is somewhat to the city's advantage to allow homes to be developed if a non-conforming lot is consistent with other developed lots on a particular street. Any home being built there would still have to meet setback requirements, which could include an averaged front setback, but it would still be possible to build on a 40-foot lot. Mr. Kesner added that most developed lots on the east side are non-conforming and would be affected if a structure on them burned down. He suggested that language on minimum lot size or on consistency with other lots on the block could be considered.

Ald. Krol reported on a recent situation in his district with a family that wants to add onto their home after the birth of twins. He said that Ald. Becker had a similar situation in his district. Those residents would appreciate moving this forward. He noted that there may be future changes in setbacks for corner lots, which Ms. Welch confirmed would be done to make those requirements more consistent with others on the block.

Moved by Ald. Krol, seconded by Ald. Grimm to recommend to Council adoption of a resolution scheduling a public hearing date and introduction of an ordinance implementing the recommended changes. Ayes: 8

Ald. Ecks agreed with concerns about undersized lots, which he termed a shoe-horn provision that residents in his area have not always been happy with. He suggested contacting the owners of the non-conforming lots as well as the abutting property owners to recommend consolidation into surrounding lots, which would then do away with the non-conformity. Advised by Ms. Welch that the city cannot force someone to divide a property, Ald. Ecks commented that it may be a matter of educating the public that it is in everyone's best interest to have conforming property. Alternatively, he asked staff to come up with some minimum size language.

Upon further clarification, Ald. Sullivan concurred with eliminating references to 1972 so that property owners are not limited to 1972 values in doing upkeep maintenance. He questioned references to not increasing the degree of nonconformity and averaging setbacks, to which Ms. Welch and Mr. Kesner responded.

Ald. Ecks raised the possibility of one neighbor encouraging another to build onto the front in order to change the average setback. Ms. Welch said that she would like to avoid allowing people to continually adding to the front of their house, and she suggested that it could be clarified that setback averaging pertains to situations where a house is being replaced. There is language that would prevent increasing the non-conformity, she noted. Ald. Ecks asked if we have 1972 market values for commercial properties, and Ms. Welch said that in many cases we don't or there are also cases where we don't have specific values for improvements made since 1972, making it difficult to determine when 50% of 1972 value is reached. That is another motivation for not using that standard, she commented.

Ald. Kopischke suggested limiting Sec. 24.50.050, averaging setbacks along residential street frontages, to rebuilds or new construction, which would prevent someone from putting a 2 ½ foot addition on the front of their home. Mr. Kesner said that, as written, the provision might be useful in cases such as adding a porch to a home that is set farther back than others on the street.

Update Report on Conditional Use of Locker's Florist, 9125 W. North Avenue

Ms. Welch reported that this committee last reviewed the Conditional Use of Locker's Florist, 9215 W. North Avenue, in May 2003 following a significant number of complaints from neighbors regarding trucks left running in the lot and other trucking and delivery issues. At that time the new business owner/lessee of Locker's was made aware of the restrictions that had been place on the property in connection with their Conditional Use as well as the need to resolve the issues brought forward. Ms. Welch indicated that fewer trucks have been observed

on the site of late, and staff has also noticed that refrigerated trucks are no longer parked there for storage. A neighbor has e-mailed photos he has taken to show that some trucks still park on Jackson Park Boulevard. A representative sample of those photos was included in committee packets. Although the problem has improved, it has not gone away entirely. Ms. Welch said that the business owner reports that he has transferred at least 50% of the distribution business to another location and is pursuing the purchase or lease of property in West Allis for the rest of the distribution operation. It may take another two months to complete that transaction, however.

Russ Drover, 9116 Jackson Park Boulevard, said that there is continued non-compliance in the residentially zoned portion of this property on Jackson Park Boulevard. There is much greater use of the premises beyond what was originally intended, as acknowledged by the business owner last May. Even if the planned move of the rest of the distribution operation takes place, other issues will still remain. Mr. Drover reported that there are separate phone lines at Lockers for other trade names, a brochure indicates there are three businesses operating on the premises, and the Preuss Florists web site provides the Locker's phone number. Using several trade names is an expansion of the facility, he felt. In addition, he said, Jackson Park Boulevard remains the main focus for delivery even though another delivery point was added. This is contrary to the Conditional Use, which states that the use should not impact the neighborhood or impair the quality of the neighborhood. There is continuing violation of oversize trucks on Jackson Park Boulevard including a beverage truck that comes on a weekly basis, and there have been no efforts to stop or penalize these trucks. In addition, outside storage is also in violation of the Conditional Use and should be enforced. Mr. Drover concluded that it is necessary to protect the quality of residential properties by not enlarging the Conditional Use permit.

Ald. Krol said he has not received any calls since this matter was last discussed by the committee. He has encouraged any residents in the area who have problems with commercial vehicles to call him or Ald. Casey so that they can pursue enforcement. It seems the business is making a good faith effort to move the production aspect of business to another site and there does not seem to be any reason not to let them continue, he felt.

Moved by Ald. Krol, seconded by Ald. Ecks to place the matter on file –

Asked for clarification of the property's zoning, Ms. Welch confirmed that the North Avenue portion is zoned for commercial use under Business Planned Development, but the Jackson Park portion is zoned for residential use. The concern there has always been truck traffic and parking. Primarily, the violations have concerned loading and trucking on Jackson Park Boulevard. Another issue is determining when the greenhouse operation, which is allowed under the Conditional Use, becomes a warehouse business not permitted under that use.

Ald. Sullivan expressed some concern about placing this on file if this is a continuing problem as evidenced by the photos. He spoke of the need for good faith efforts to make some changes, which should be balanced with the interest of the residents as well as potential detriment if this is restricted to the point that the business can't succeed. Feeling that more than two months may be needed to move the rest of the operation, he suggested revisiting the issue in six months.

Mr. Kesner advised that a motion to hold until date certain would take precedence over a motion to place on file.

Moved by Ald. Sullivan, seconded by Ald. Herzog to hold this matter for a period of six months –

Mr. Drover said that the cluttered outside storage area abuts two residential properties. There is a canvas cover over some objects and adjacent flower pots stacked high. Ms. Welch agreed that the area is unsightly and indicated that specific instructions could be issued to discontinue outside storage, with conditions revisited in a certain amount of time. Ald. Herzog commented that action should be taken since this is unsightly and detrimental to the neighborhood.

Ald. Kopischke referred to discussion at the May meeting regarding an official notice of violation and the need to inform the owners of concerns. Ms. Welch confirmed that a letter was sent to the business/property owners notifying them of the previously imposed conditions, that there were violations, and that there would be a six-month review. The business owners, who lease from the Locker family, are based in Iowa and were unable to be present tonight.

Ald. Krol indicated support of a six-month hold. He noted that the matter could still be brought back at any time if placed on file. Mr. Kesner added that it could also be brought back sooner under the six month hold.

Ald. Sullivan noted that the city's property inspector position is in the process of being filled on a part-time basis. It would be that individual's job to inspect properties like this, he said, but this shouldn't have to wait for that type of enforcement.

Vote on the motion to hold for six months, Ayes: 8

Moved by Ald. Herzog, seconded by Ald. Ecks to direct staff to pursue enforcement action that could lead to a citation, if necessary –

Noting that undated photos may not hold up in court, Ald. Krol commented that we haven't yet had an opportunity to observe the violations and haven't had any complaints. He felt that enforcement action may be premature. Mr. Drover indicated that his photographs are automatically dated by his camera, but that date did not show up on the reproductions. Ald. Sullivan said that it is assumed that staff would verify the conditions before proceeding.

Vote on the motion, Ayes: 7; Noes: 1 (Krol)

The meeting adjourned at 9:45 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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