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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, January 11, 2005

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Krol (8:45 p.m.), Subotich, Sullivan, Treis -8

ALSO A. Kesner, City Atty.; N. Welch, Community Dev. Dir.; Alds. Grimm, Casey, Bruderle-Baran,
PRESENT: Stepaniak, Maher

Ald. Kopischke as Chair called the meeting to order at 8:11 p.m. -7

Wauwatosa Senior Commission

Mr. Kesner reported that the Wauwatosa Senior Commission was created several years ago to study senior issues in the city. He has worked with them over the past nine months to create an ordinance that defines the commission's membership, the appointment of its members, and its duties and tasks.

Mary Van Derven, 2339 N. 62nd Street, chairperson of the Senior Commission, said the commission was formed by the Mayor and approved by the Common Council in 2001 to identify and assess the needs of Wauwatosa seniors. In that process, the commission presented to the Council in 2002 the "Adding Life to Years" assessment. In an effort to formalize their identity, they have looked at models from other communities as well as the Milwaukee County Commission on Aging.

Ms. Van Derven said that the commission's role is one of advocacy and education. They have no budget, but in collaboration with the Health Department they have successfully sought some grant funds for projects such as the assessment study. Although the Health Department, the Hart Park senior center, and the school district's recreation department program at city hall all work with seniors, the commission doesn't have a smooth vehicle to connect with the seniors, which is something they will look at to determine how best to give them a voice and serve them.

Jim Kohlbeck, 8202 Woodland Avenue, a member of the Senior Commission, reported that the 2000 census indicates that 25.8% of Wauwatosa's population is 55 or older and that 21.6% is 60 or over. Although not a vocal group, social service agencies indicate that the seniors here have some real problems. He believes that the city should be involved in identifying those problems and doing whatever it can to solve what they can.

Ald. Grimm, the Council liaison to the Senior Commission, endorsed the proposed ordinance. This is a very energetic group, he said, that needs to get started on solving some of the problems.

Moved by Ald. Sullivan, seconded by Ald. Krill to recommend to Council
introduction of the proposed ordinance –

Ald. Treis questioned the age designations used by various groups to identify seniors. He felt that there should be a common age designation that is used by all the groups. Mr. Kohlbeck said that the Hart Park senior center offers services to those age 50 and up, which corresponds with AARP membership qualifications. Ms. Van Derven said that there is a variation with many offering membership at age 55 or 60. She said that the commission has had some good discussions about age. The ordinance requirement that the majority of the commission's membership shall be 60 years of age or older will depend on the Mayor finding qualified people in that age group to be representatives.

Ald. Treis recommended a delay so that the Senior Commission can have some discussion and coordinate eligibility ages for all groups. He felt that there should be a basic formula that would allow groups to be more restrictive but not less. He also spoke of the fact that right now the various groups don't know who has authority.

Ald. Sullivan said the ordinance doesn't exclude anyone but just states that a majority of the membership should be over 60. He said that there is no need to debate age limitations for the various senior groups in the city; and that subject, in fact, would be inappropriate since it is not properly noticed for this meeting.

Mr. Kesner said that the commission debated the question of age but didn't actually establish a minimum age, which he felt was a good decision since it allows for some flexibility in those under 60 who represent a particular group or agency. Upon further explanation by Ald. Treis, he said that it is important to recognize that the structure of the Senior Commission doesn't reflect any intention or desire to supervise any of the individual senior groups in the city or to be an umbrella organization to govern the various groups.

Moved by Ald. Treis, seconded by Ald. Subotich to hold this matter for two weeks. Ayes: 3; Noes: 4 (Becker, Birschel, Krill, Sullivan) Motion fails.

The Chair suggested clarification that not more than two elected officials shall be voting members and a change from use of "continuous" to "continual" in Section 2.28.020 (A). He commented that he would have no problem with bringing the age down to 50 in order to give the Mayor more flexibility in appointments. Mr. Kesner suggested additional wording in the final section to specify that the commission's annual report to the Common Council should occur each year in January.

Moved by Ald. Kopischke, seconded by Ald. Krill to amend the motion by clarifying that not more than two elected officials shall be voting members, to change "continuous" to "continual" in Section 2.28.020 (A), and to specify that the annual report to the Common Council shall occur each year in January –

Vote on the amendment: Ayes: 7

Vote on the original motion as amended: Ayes: 6; Noes: 1 (Treis)

Proposed Ordinance – Interior Yard Setbacks

The committee reviewed a proposed ordinance amending Chapters 24.07, 24.08, and 24.10 by changing the interior yard setbacks for principal buildings on corner lots in the Estate, AAA, and AA Single Family Residence Districts. The Chair noted that it was clarified at the public hearing last week that this is a retroactive ordinance that will actually loosen some restrictions on homeowners. Ms. Welch added that this change will benefit most of the property owners in the city and should not penalize anyone. Considering that most of Wauwatosa's homes were constructed before the existing ordinance, this will create fewer non-conforming properties.

Moved by Ald. Treis, seconded by Ald. Birschel to recommend to Council adoption of the ordinance. Ayes: 7

(Ald. Krol present. -8)

Proposed Ordinance – Development of Large Retail Sites

The committee reviewed a proposed ordinance creating Chapter 24.25 and Sections 24.23.090 and 24.24.035 to create additional restrictions on the development of large retail sites. The Plan Commission recommended approval

by a 7-0 vote, and a public hearing was held on January 4. Ms. Welch said these additional restrictions are proposed because of the large retail parcels now available here and the anticipation that more may become available. The possibility of big box or large scale retail on those sites raises the issue of the considerable impact those uses generate on the community, including environmental, economic, and traffic issues. It seemed prudent to consider imposing restrictions so that, while hoping to promote economic development, we also have controls in place.

Gina Hansen, National Association of Industrial and Office Properties, Waukesha, said this trade association for the commercial real estate development industry has some serious concern, especially about requirements for financial security or a demolition bond. She said that requiring money at some point in the future is not really a reasonable demand to put on development and will have a serious negative effect on development in the city. Financial security forms such as a line of credit, bond, or escrow all have a high cost and would tie up significant assets for an unknown period of time. Ms. Hansen felt that a development agreement might address the city's interests in terms of flexibility and control in that it could be tailored to each project. She urged withholding action tonight to give them time to work with the city on a better way to address concerns. She noted that her group's concerns are detailed in a letter to the Mayor, copies of which were provided to Council members.

Attorney Deborah C. Tomczyk of Reinhart, Boerner, Van Deuren SC, Milwaukee, spoke on behalf of Continental Properties Company, Inc., reiterating comments in her letter of January 7, 2005, which was included in committee packets. She said that research indicates that only one community nationwide has adopted a demolition bond requirement. She felt that it would have a chilling effect and encourage developers to go to elsewhere. She also cited concern about the impact on the financial community, whose representatives have not yet been at the table. Some very good potential uses may be eliminated if demolition action is taken in 12 months. She applauded the design guidelines and indicated a willingness to work with the city on alternatives. She urged proceeding slowly and cautiously and involving the financial community.

Ald. Casey outlined his experience with the cities of Eau Claire and Oshkosh, with Milwaukee County as the former Director of Economic Development, and with Centerpoint Properties. He supported the ordinance's aesthetic requirements but felt that having to tie down at the front end what would happen if a building goes dark sends a chilling message to the development and financial communities. He noted that Wauwatosa is a strong market that draws from the entire metropolitan area. Our demographics are strong and bode well for the future, and he would not foresee a lot of big boxes going dark. We have tools at our disposal such as the Redevelopment Authority and ordinances that deal with blight. He cited action taken here leading to redevelopment of the Camelot, Greendale's actions on a vacant department store, and the reprogramming of a former grocery store site in Milwaukee that was left vacant when the store moved to a larger existing property. He cautioned against treating different property classes and sizes differently and urged consideration of development agreements as a creative and less onerous way to deal with properties going dark. He said that Wauwatosa has demonstrated an ability to work with developers to creatively recycle properties and should send that message to the development community.

Robert Kennedy, 2312 N. 80th Street, chair of Design Review Board C, said the board views the design guidelines positively, raising the bar aesthetically for big box stores. They are concerned, however, about any restrictive language that would tend to lessen the ability of architects and designers to come up with creative solutions. He suggested including a caveat to the restrictions, stating "*unless approved otherwise by the Design Review Board*" or stating that "*the guidelines will be under the purview of the Design Review Board.*" This would provide the opportunity to experiment rather than being locked into a requirement. Ed Haydin, 2568 N. 71st Street, also representing Design Review Board C, said it is important to encourage some creativity that reflects what this community is all about. He said that the board has struggled with the difficulty of providing minimum guidelines while still encouraging creativity.

The Chair reported that he has conferred with City Attorney Kesner about some of the concerns that have been raised and has drafted some potential amendments that might help address those concerns.

Ald. Birschel summarized articles he researched on the regulations and experience of other communities nationwide. He found that some require escrow accounts or demolition bonds. There were reports of large buildings standing vacant for extended periods of time. One community caps the size of the stores and requires developers to meet design guidelines, submit plans for reusing structures if the original tenant leaves, and design flexible features to facilitate reuse. He noted that large corporations sometimes keep abandoned stores empty to thwart competition when they move to a larger facility nearby. While supporting design guidelines and the need to protect the city from properties that go dark, he proposed holding the ordinance so that the City Attorney can look into some of the issues that have been raised.

Moved by Ald. Birschel, seconded by Ald. Krol to hold the matter for two weeks, directing the City Attorney to meet with representatives of concerned organizations in an effort to craft an ordinance that would be acceptable to both the city and the development community –

The Chair opposed the motion to hold since it would not allow others on the committee to speak or to discuss the language already crafted to address those concerns. Ald. Sullivan supported holding the matter based on a need to examine language and hear from others beyond those representing development interests. Ald. Becker suggested withdrawing the motion with the understanding that it could be remade later. In response to a question, City Attorney Kesner clarified that a motion to hold is one of the highest priority motions under the Common Council's rules of procedure. Nothing with lower priority can be discussed or considered; it would halt substantive discussion.

With consent of the second, Ald. Birschel withdrew the motion to hold.

Ald. Krill raised questions about Section 24.25.040 B to which objections have been raised. [*"Provisions shall be made for the removal or adaptive reuse of the structure by the applicant should the facility not be used for a period of 12 consecutive months. In order to assure compliance with this subsection, a letter of credit, bond, escrow or other financial security, in a form acceptable to the City Attorney, may be required by the City."*]

Ms. Welch said that the goal was to provide options for demolition or adaptive reuse and not allow a building to remain dark for an indefinite period. She said many different scenarios could arise, and it could take more than a year for redevelopment. It doesn't necessarily mean that a building would have to be demolished. A store could go dark for a variety of reasons, and expectations might be different if it was due to economic decline or the store choosing to move out of the area. The primary goal is not allowing it to sit dark without anything being done.

Ald. Krill asked developers if they would support the ordinance if the section B were struck. Ald. Casey said that maybe we can get where we need to be with development agreements and adaptive reuse. Prescriptive language may be too late at the back end. Ms. Tomczyk agreed that section B is most objectionable but said that A is also of concern. [*The owner shall maintain the property in compliance with the approved plan. If the property is not found to be in compliance, the City may take action to correct the situation and costs of such corrective action shall be assessed as a special charge against the property, to be added to the property tax bill pursuant to Section 66.0627 of the Wisconsin Statutes.*] She noted that no specific amounts or limits are stated, which creates the potential for a big bill that keeps running and would trump a lender's position. Ms. Hansen said that taking out subsection A would go a long way toward easing their concerns, but both A and B are troublesome.

Copies of proposed changes to 24.25.040 referred to earlier by the Chair were distributed. Mr. Kesner was asked to clarify the role of the chair in commenting on agenda items. He responded that tradition here has been to turn over

the chair to the vice-chair, although it is not addressed in the Council's rules. Roberts Rules of Order for Small Boards, however, allows a chair to comment without turning over the chair.

The Chair indicated that the intent of the suggested changes is to emphasize that a developer's agreement would be the first choice. Only in the absence of that agreement, we *may* require some sort of security with the caveat that no security would supersede the rights of qualified lienholders. A financial security requirement is an incentive to executing a developer's agreement, which gives everyone maximum flexibility on appropriate conditions. The suggested amendments to 24.25.040 A and B and a new section C (labeled Draft 1/11/2005 12:11 pm) are:

- A. *The owner shall maintain the property in compliance with all provisions of the Wauwatosa Municipal Code or a plan approved as part of a developer's agreement approved by the common council. If the property is not found to be in compliance with the code or the approved plan, the City may take action to correct the situation and costs of such corrective action shall be assessed as a special charge against the property, to be added to the property tax bill pursuant to Section 66.0627 of the Wisconsin Statutes.*
- B. *If the facility is vacated, the owner or operator, within twelve [twenty-four?] months, shall provide for the removal or adaptive reuse of the facility. The time limit may be extended if a plan for such removal or reuse is approved by the Plan Commission.*
- C. *In the absence of a developers agreement approved by the common council, a letter of credit, bond, escrow or other financial security, in a form acceptable to the City Attorney, may be required by the City in order to assure compliance with subsection B. Execution against such instrument or security shall not supersede the rights of lienholders, creditors or other entities having a duly recorded interest in the property, provided such entities are not directly affiliated with or related to the owner or operator.*

Two additional drafts of changes to other sections unrelated to the above were also distributed (labeled Draft 1/11/2005 12:12 pm and Draft 1/11/2005 7:35 pm).

Mr. Kesner said that in part A the owner would maintain the property in compliance with provisions of the code or a plan approved by the Common Council as part of a development agreement. The ability to place special charges on the tax rolls brings this into compliance with existing property maintenance rules. A developer's agreement would likely be approved by this committee and the Common Council. If it had design guidelines, it could also be reviewed by Design Review or, if plan related, by the Plan Commission.

The Chair suggested addressing the concerns of the Design Review Board with language stating "*unless otherwise specifically provided in a developer's agreement, all parcels shall be required to meet the following guidelines.*" This would allow for some deviation and creativity in design.

Ald. Becker asked what a developer's agreement would include and if it could restrict competing stores from locating within a certain distance. Ms. Welch said an agreement typically would include things such as landscaping, lighting, materials, and other site issues. It would be very similar to the business planned development process. The Chair added that any requirements in this ordinance could be included plus other conditions such as those that might assure adaptive reuse. Mr. Kesner said it would be directly related to a particular development and unlikely to address off-site competition. The GE Healthcare agreement included a provision for approval of the design by the Research Park Design Review Board, which is not atypical.

Ald. Birschel asked if the city could deal more strictly with multi-national corporations headquartered elsewhere than with those that have some attachment to our community. Mr. Kesner said that development agreement provisions would depend on the city's comfort level with the developer in assuring follow-through with the requirements. Ald. Birschel noted that one city has designated a particular zone in the city where big box stores can locate. Mr. Kesner said that Franklin has done that here locally.

Ald. Krill asked Design Review Board representatives if the suggested changes would address their concerns. Ursula Twombly, 11716 W. Meinecke Avenue, a member of Design Review Board C, said her concern is that the project would come through the Design Review Board before it goes too far in the process, which is addressed.

Ald. Krol inquired if there is a common definition for the square footage of a big box store. The Chair said that there are ordinances in Wisconsin with limits of 20,000, 25,000, 50,000, and 60,000 square feet. Ms. Welch agreed that restrictions vary, and it often seems that smaller communities are more likely to define big boxes at smaller square footage. She said that we have tried to arrive at a threshold at which negative impacts would be generated. Our current moratorium states 35,000 square feet.

Ald. Krol noted that escrow monies could be unavailable in the case of a bankruptcy. He asked about the effect of a vacant building on taxes. Mr. Kesner said that a retailer/owner generally pays real estate taxes based on value of the building and land and personal property taxes on the contents, if any. Complicated formulas are used to compute the fair market value of vacant property, which the owner could challenge through the Board of Review. The assessed value could potentially go down if unrentable. Asked if taxes on a vacant building could revert to the level they were at when occupied, Mr. Kesner said that it would be hard and probably illegal to legislate the value of a property. The city risks not getting a development if it imposes terms that are too onerous. There is less flexibility to back off with an ordinance than with a developer's agreement, he noted. Ald. Krol suggested a provision that would prevent building a similar store within a certain distance when a store is vacated. He said that he often observes vacant stores that were abandoned in favor of a bigger replacement located nearby.

Noting that this ordinance isn't as detailed as the design guidelines developed by Kubala Washatko for the county grounds, Ald. Sullivan suggested consideration of applying those guidelines to this ordinance. Perhaps the ordinance should apply overall, including the county grounds, with an option for exemptions by the Design Review Board. Ms. Welch pointed out that the county grounds guidelines were developed with a focus on development compatible with the Eschweiler buildings and contain language based on those buildings, storm water requirements, and the specific site that does not translate to multiple sites throughout the city. The proposed ordinance is based on language in similar ordinances throughout the country. Ms. Welch indicated that she would discuss with the Review Board how the guidelines could apply to multiple situations.

Moved by Ald. Birschel, seconded by Ald. Krill to hold this matter for two weeks, directing the City Attorney to work with the Community Development Director and rework the language to include the amendments offered tonight and considering other comments that have been offered –

Ald. Krol raised the question of carving out a specific zone in which big boxes would be allowed. Ms. Welch said that considering overall land patterns, it would be very difficult to dictate where big boxes could be located. It would immediately create non-conforming properties in that we already have major grocery stores on State Street, for example. The ordinance allows consideration of whether individual sites are suitable for development.

Ald. Bruderle-Baran commented that discussion should be expanded to others in the community who have an interest in big box developments. Members of the press here tonight should be able to get that information out. Ald. Sullivan pointed out that several more meetings may be needed since there are other issues that haven't yet been discussed such as zoning and the need for economic, traffic, and environmental impact analyses. There also should be some consideration of an upper limit on size.

Ms. Welch reported that the current moratorium expires in February. There was consensus that the committee should have the option at the next meeting of either forwarding the ordinance to Council for adoption or extending the moratorium.

Vote on the motion, Ayes: 8

The meeting adjourned at 10:03 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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