



CITY OF WAUWATOSA

7725 WEST NORTH AVENUE

WAUWATOSA, WI 53213

Telephone: (414) 479-8917

Fax: (414) 479-8989

COMMUNITY DEVELOPMENT COMMITTEE MEETING

Tuesday, January 25, 2005

PRESENT: Aids. Becker, Birschel, Kopischke, Krill, Krol, Subotich, Sullivan, Treis -8

ALSO

PRESENT: A. Kesner, City Atty.; N. Welch, Community Dev. Dir.

Ald. Kopischke as Chair called the meeting to order at 8:05 p.m. -8

Wauwatosa Senior Commission

The committee reviewed the proposed ordinance creating Chapter 2.28 of the Code regarding the Wauwatosa Senior Commission. Mr. Kesner explained that the Common Council created the commission by resolution several years ago, and this ordinance formalizes its structure, purpose, and duties. Some minor editorial changes are still needed and will be made in the next week before the ordinance is adopted.

Mary Van Derven, 2339 N. 62nd Street, chairperson of the Senior Commission, spoke in support of the ordinance. Jim Kohlbeck, 8202 Woodland Avenue, a member of the Senior Commission, said the commission worked long and hard on this ordinance with the guidance of the City Attorney, and he also urged approval.

Moved by Ald. Sullivan, seconded by Ald. Subotich to recommend to Council adoption of the proposed ordinance –

Ald. Krol asked if there is any consistency in whether chairpersons of the city's various commissions are designated by the mayor or by the body itself. Mr. Kesner responded that it varies from group to group. The chairperson of the Senior Commission would be designated by the mayor, which is not unusual.

Moved by Ald. Treis, seconded by Ald. Birschel to amend the motion by stating that a majority the commission's members shall be age 50 or older rather than age 60 or older –

Ald. Treis spoke of the need to have a common definition among the various senior groups. He said that the mayor has also supported a change from 60 to 50 in discussions with him.

Ms. Van Derven said that the commission had many discussions about the age requirement and looked at some models, particularly West Allis. Wauwatosa's Senior Commission is set up as an advisory/advocacy body, and some of its initial appointees are health and social service professionals who work with seniors but are not necessarily in that category themselves. Ms. Van Derven emphasized that it is the *person* rather than their age that is important. Mr. Kohlbeck said that five of the nine members would be 60 or over, which seems reasonable and logical. He noted that the Hart Park Senior Center categorizes memberships by age, charging 50% more for those aged 50-61.

Ald. Sullivan commented that any of the age designations for seniors are arbitrary and said that we have vested this commission with our confidence and should trust their recommendation. Ald. Birschel said he was interested in hearing more comments but now feels comfortable with using "age 60 or over." The Chair felt that specifying 50 or over would give more flexibility. That age group could be considered soon-to-be seniors and would certainly be

interested in the commission's work. He also suggested stating "majority of the *voting* membership" so as to exclude the Council liaison appointed by the mayor.

Roll call vote on the amendment, Ayes: 3 (Treis, Subotich, Kopischke),
Noes: 5. Motion fails. Roll call vote on the original motion, Ayes: 8

Proposed Ordinance – Development of Large Retail Sites

Held from the previous meeting was the 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 committee received copies of additional correspondence and e-mails received since the previous meeting. Ms. Welch reported that the Plan Commission of the City of Madison approved their "big box" ordinance last night, moving it forward in their process.

Mr. Kesner called attention to some technical changes in the updated version of the ordinance now before the committee. He referred specifically to introductory language that was added to Sections 24.25.020 and 24.25.030: "*Unless otherwise specifically provided in a developer's agreement approved by the common council, all parcels or development sites with a total of 50,000 sq. ft. of retail development shall be require to...*" [...*comply with the following provisions*" in 24.25.020, or "*...meet additional design guidelines as stated below*" in 24.25.030]. He suggested revision to "50,000 or more square feet of *new* retail development" to clarify that any expansion of existing development by 50,000 square feet or more would also be subject to provisions of this ordinance including the option to execute a developer's agreement.

Moved by Ald. Sullivan, seconded by Ald. Krill to revise the introductory language in Sections 24.25.020 and 24.25.030 to read "50,000 or more square feet of new retail development" –

Ald. Treis observed that this would allow an existing 100,000 sq. ft. development to expand to 149,000 square feet without being subject to the ordinance, which would be contrary to the concerns this ordinance is addressing.

With consent of the second, Ald. Sullivan amended the motion by removing the word "new" from the proposed language.
Vote on the motion as amended, Ayes: 8

Joe Cira, 10428 W. Vienna Avenue, said he raised some concerns at the Common Council hearing on this ordinance and questioned why he has not yet heard some of the issues discussed. He suggested waiting five years before invoking the demolition fee provisions and also favored less square footage for big box stores. He spoke of concerns with stores that leave a former site vacant to thwart competition. He questioned plans for the Briggs & Stratton site, mentioning concerns about size, types of development, infrastructure, and traffic. Ms. Welch clarified that this is a broad ordinance that would give the city additional controls over any big box proposal that comes in. It does not apply to a specific site but is a framework within which a specific future project can be assessed. Some of the issues raised by Mr. Cira have already been discussed and that discussion will continue here tonight.

Rosemary Wehnes, 7922 Jackson Park Boulevard, supported a provision for financial security so that vacant buildings that may be hazardous from security and environmental standpoints can be removed without cost to taxpayers. She suggested stating a maximum allowable size that is appropriate for Wauwatosa, noting that Franklin has a limitation of 110,000 square feet. She commented that some potential future redevelopment sites are surrounded by many local businesses that serve that area. Positioning a big-box store such as Walmart on State Street, for example, would ultimately reduce residents' choices for those services. She suggested neighborhood zones with size limitations appropriate to each zone to protect those local businesses. There is also a need to explore stormwater infrastructure requirements. She said that a number of communities require comprehensive economic and community impact

review, including a hearing so that the public can speak to the impact of granting a permit. She favored extending the existing moratorium to allow for further research. She also urged inclusion of bicycle facilities in the requirements.

Attorney Deborah C. Tomczyk of Reinhart, Boerner, Van Deuren SC, Milwaukee, said the development community would agree that they should comply with flood plain requirements and other such measures. She felt they would also support the aesthetic guidelines. She urged continuation of the discussions and careful consideration by staff, this committee, and the public but said that concerns remain about any potential demolition of property without involvement of the owner or lender through notice and public hearing. She suggested adding introductory language to Section 24.25.040 similar to that added to Sections 24.25.020 and .030 so that acceptable alternatives could be considered on a site-specific basis.

Gina Hansen, National Association of Industrial and Office Properties, Waukesha, expressed agreement with many of Ms. Tomczyk's statements. She supported language on design standards as long as there is provision for flexibility through a developer's agreement. She said that concerns about the financial security provision remain and offered participation of her organization as a resource as discussions proceed.

Mr. Cira suggested that the demolition fee could be resolved by requiring an up-front payment into a trust for abandoned properties, perhaps a percentage of sales or profits such as 1/10 of 1%. After a period of years, that money would be the city's to use as seen fit to take care of the property.

Ald. Becker asked if there could be certain general guidelines but also different, strict guidelines for specific projects. Mr. Kesner said that we can make custom agreements based on particular situations, but any variation from the guidelines will need to be justified very specifically. Asked about limitations on the number of developments within an area, Mr. Kesner said that it is within the city's fundamental zoning powers to zone for particular uses and control those uses. That is also addressed through the Comprehensive Plan.

Ald. Sullivan spoke of setting reasonable limitations and some flexibility without creating a "reset button" for a future council. Certain things should be core to this ordinance, such as a demolition bond, size limitations, and traffic and economic or environmental analyses and could be placed in a single section with language that exempts them from being waived or negotiated as part of a developer's agreement. The Chair mentioned requiring approval of developers' agreements by a 2/3 or 3/4 Council vote, but Mr. Kesner indicated that is potentially problematic.

Ald. Birschel indicated that he would like more time to investigate other community's ordinances. The Chair said that the Director of Community Development and the City Attorney have already referenced and worked from many of those ordinances. Mr. Kesner offered to provide copies of other ordinances upon request.

Ald. Krill asked if negotiation of requirements by means of a development agreement could be seen as weakening the ordinance. Ms. Welch said the option makes sense when considering the variety of sites that may become available. Some may have environmental contamination, for example, that needs to be addressed and could require deviation from the guidelines in terms of positioning a building within the site. The goal is not to use the agreement to get out of some requirements but to provide flexibility to respond to certain site conditions. Mr. Kesner noted that a developer can build without a developer's agreement under the current ordinance if the use is permitted at the planned location. The city prefers having an agreement in order to guide developers, but they could get a permit without negotiating with the city as long as they follow the ordinances. He reiterated that the proposed ordinance would provide the power to negotiate some requirements, but only with specific justification.

Ald. Krill commented that a developer's agreement can be seen as almost a separate zoning plan, and he felt its flexibility is positive and doesn't weaken the ordinance. It can address developers' concerns about demolition provisions and also contain provisions that would prohibit intentionally keeping a building vacant without marketing it.

He asked if this would satisfy the development community's concerns. Ms. Hansen indicated there would still be concern about what could happen with the property. Ms. Tomczyk said that the financial security requirements and demolition without the owner's consent would still be concerns.

(The meeting recessed at 9:25 p.m. and reconvened at 9:36 p.m. Ald. Subotich excused. -7)

The committee spent some time discussing how to proceed with review of the ordinance. Ms. Welch further explained the process used in drafting the ordinance, including review of ordinances from a variety of communities. Most had very similar approaches to design guidelines, but critical issues such as traffic, stormwater, environmental impact, and the demolition bond were drafted to meet Wauwatosa's specific needs. Asked about other provisions in Wisconsin for demolition or financial security, she cited a Grafton provision for some form of demolition if an existing store moves to another location in the community. In another case, a developer is required to provide a marketing plan that indicates how a property will be reused.

Moved by Ald. Krol, seconded by Ald. Becker to hold this matter until the next meeting so that more information can be provided by the Community Development Director on financial penalties enacted by other communities –

The Chair noted that staff could be consulted during the time prior to the next meeting for answers to any questions. By continuing discussion now, the committee could proceed from a more informed point and know if more investigation is needed. Ald. Sullivan also advocated proceeding, noting that the Community Development Director has done a good job of looking at what has been done elsewhere.

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

Mr. Kesner said he is not aware of any financial security requirements in other Wisconsin ordinances. It is a creative solution that has been discussed elsewhere nationwide but was adopted only in Buckingham, PA.

The Chair sought comments on the 50,000 sq. ft. provision. The current moratorium is for developments in excess of 35,000 square feet; other communities range from 20,000 to 100,000 square feet. Ald. Birschel expressed confidence in the Plan Commission's recommendation of 50,000 square feet. The Chair, who is the Council representative to the Plan Commission, said that the Plan Commission reviewed the square footage of various existing developments in the city for comparison purposes. Discussion centered around 40,000 and 50,000 square feet with consensus ultimately for 50,000 square feet.

Ms. Welch confirmed that a developer's agreement would be approved by the Common Council via this committee. Plan Commission review and recommendation could be added if seen fit.

In response to a question, Mr. Kesner said that it would be difficult to cover the issue of a vacated building in a uniform rule that would be enforceable. Some cities have done it by requiring redevelopment of the old parcel if a new facility is built within a certain distance, but there is some question of how strongly that could be enforced. If agreed to by the developer in a signed agreement, it would be enforceable.

Ald. Sullivan presented draft language on economic impact, noting that a business planning to locate in a particular location would have already done an economic impact analysis and would have some ability to project that impact into the future. Ald. Krol was concerned that any impact information provided could be based on flawed assumptions. It could be difficult to gauge whether the data is pertinent over a specific span of time. Ald. Sullivan acknowledged that numbers could be skewed but said staff would have to work closely with the developer. He felt it is better to have something in place but keep in mind the fact that information could be flawed.

The Chair questioned how costly obtaining reliable information would be and whether it would be worth the cost to the developer if it is just given cursory review. He noted that a developer's analysis would focus more on their own economic impact than on impact on the community. He also raised the question of potential intrusion on strategic decisions or proprietary information. With Ald. Sullivan's concurrence, he requested that staff review the proposed language and other requirements and report back to the committee.

Suggested language on environmental impacts was next reviewed. Ald. Sullivan said it is derived from the language used by other cities and is something he feels necessary if talking about redevelopment of existing sites. It would look out for the best interests of the community and not necessarily be a negative for the developer. The Chair asked staff to also return with some analysis and options on this proposal.

Ald. Sullivan's proposal on size limitation language was distributed. He suggested an upper limit of 70,000 as a beginning point for discussion. That is the approximate footprint of Boston Store at Mayfair; it is less than in some other markets and more than others like Stoughton. He felt that the city should at least go on record as saying there should be an upper limit. Ms. Welch reported that the city's largest retail establishment is Marshall Field's at 269,592 square feet on three floors. Home Depot is approximately 134,000 square feet and Target about 130,000. Jewel-Osco is approximately 62,000 square feet, Pick 'N Save about 64,000, and Sentry about 54,000. The Chair asked how establishing an upper limit would impact any establishments already above the limit. Would it make it difficult to get permits for minor expansion or changes? Mr. Kesner said that unless specifically addressed, they might become non-conforming uses that couldn't expand or change. Language could be inserted to address that situation. A size limitation, he said, could be addressed through a limitation on absolute square footage or a limitation on the footprint. He indicated that he would look into the issue further and report back.

The Chair reported that a possible option to financial security requirements under Section 24.25.040, Maintenance and Reuse of Properties, is contribution to a land conservation fund. The city passed a charter ordinance in 1968 and established such a fund in 1969. Copies of the existing charter ordinance and language suggested for incorporation in the big-box ordinance were distributed. The fund has no money and hasn't actually been utilized since the 1970s but has a structure and purpose similar to what is being discussed. Rather than tying up security for an indefinite period, there would be a one-time contribution into a pool from which funds could be drawn to deal with deteriorated or vacant properties. The proposal is to set the fee at 20 cents per square foot, which is the same amount charged for a building permit fee although the proposed fee is not driven by that permit fee.

Mr. Kesner explained that the city has the power through state building codes to order dilapidated or dangerous buildings razed or removed and also can use condemnation procedures in the Wisconsin Statutes. However, the city does then need money to follow through on redevelopment. This proposal would provide a fund to undertake actions such as purchasing, acquiring or razing blighted properties. Those processes already have the built-in protections for lenders, creditors, and owners that have been a concern of the development community. If taxes are still being paid on a vacant property, it could not be seized through a sheriff's sale. The property tax impact comes not necessarily from failure to pay taxes but because a vacant building may have a much lower market value and, thus, lower taxes. Also, some studies indicate that vacant buildings have a carryover effect on other property values.

Mr. Kesner said that the land conservation fund language doesn't address strategic abandonment of a building to avoid competition. Some communities have tried to do that, but it may not be enforceable. As drafted, a plan is required for removal or reuse of a vacant building. Mr. Kesner pointed out a proposed introductory paragraph stating that the provision may be addressed in a developer's agreement. The owner is given the opportunity to cure before corrective action is taken. Any changes to the details of the existing charter ordinance could be made at the point that the land conservation fund is recognized and funded, since a charter ordinance has a different process regarding passage and effective dates.

The Chair suggested next considering which requirements should be considered a default part of the guidelines for any developer's agreement and which may be specific to fewer potential sites and brought into an agreement as needed. Ald. Sullivan responded that all of them should be defaults and he would also argue that "emptiness" should be considered a defective condition. Mr. Kesner agreed that an empty building could impact property values and indicated that the issue could be clarified when the land conservation fund is clarified.

Mr. Kesner suggested action on changes made to Section 24.25.010, Purpose and Definitions, of the proposed ordinance that were discussed but not officially voted on at the previous meeting.

Moved by Ald. Krill, seconded by Ald. Krol to approve the proposed language in the current draft of Section 24.25.010. Ayes: 7

Moved by Ald. Krol, seconded by Ald. Birschel to hold this matter until the next meeting with the provision that the Director of Community Development and the City Attorney consider the comments and suggestions made and how they could be included within the context of the draft ordinance. Ayes: 7

Extension of Existing Moratorium on Development of Large Retail Sites

The committee reviewed the existing temporary moratorium on "big box retail establishment" applications, which was enacted on February 17, 2004, and will expire February 17, 2005.

Moved by Ald. Becker, seconded by Ald. Krol to hold this matter until the next meeting –

Ald. Sullivan felt that extending the moratorium should be considered tonight. Ald. Treis suggested extension until such time as the proposed ordinance on development of large retail sites is in place. Mr. Kesner encouraged setting a date certain that would specify the longest term of the extension.

With consent of the second, Ald. Becker withdrew the motion.
Moved by Ald. Becker, seconded by Ald. Krol to recommend extending the moratorium deadline for six months or until passage of an ordinance on development of large retail sites, whichever is earlier. Ayes: 7

Proposed Amendment to Election Sign Code

Mr. Kesner discussed a proposed revision to Section 15.14.290 of the Code relating to election signs. He said that it contains provisions that are very consistent with constitutional limitations, are unquestionably enforceable, and are designed to prevent the unregulated spread of election signs. Due to suit filed by a resident, the city has been unable to enforce election sign regulations since 2001. The proposed revisions are similar to other portions of the code; suggestions of the building and property maintenance inspectors have been incorporated.

In response to questions, Mr. Kesner clarified ordinance provisions relating to size and placement of signs. He said that billboards generally are not legal in Wauwatosa and would have their own regulations under state law. A requirement that signs must be removed by seven days after an election has been invalidated in other states. Our code defines temporary signs as having a duration of less than six months. If something is more than just a temporary

sign, it has to comply with the more stringent requirements for permanent signs. Window signs are separately addressed under requirements for wall signs.

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

The meeting adjourned at 11:09 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin