



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING Tuesday, June 12, 2007

PRESENT: Alds. Birschel, Didier, Donegan, Herzog, Krill, Meaux, Minear, Treis -8

ALSO N. Welch, Community Dev. Dir.; E. Miller Carter, Asst. City Atty.;;
PRESENT W. Kappel, Dir. of Public Works; J. Archambo, City Admin.

Ald. Treis as Chair called the meeting to order at 8:00 p.m.

Conditional Use at 12324 W. North Avenue

Held from the previous meeting, the committee reviewed a request by Jennifer Matovich, McDonald's, for a Conditional Use in the AA Business District at 12324 W. North Avenue for a speaker board/intercom ordering system. The Plan Commission recommended approval by a 3-2 vote.

Ms. Welch reported that the new system would replace the current face-to-face ordering system that was stipulated by the Board of Zoning Appeals as part of the original approval for this site due to concerns that noise would carry and affect nearby residents. Although there had been no feedback on the current request at the time of the Plan Commission meeting, the owner of the adjacent complex has since expressed concerns about noise potentially affecting his tenants.

Mr. William Reilly, 1616 N. Water Street, Milwaukee, said he built the 138-unit Courtyard apartment project about 30 years ago. When McDonald's went in, he was assured that his concerns about the very intense use of that site would be addressed, but that hasn't occurred. It has recently been brought to his attention by many residents and the resident caretaker that the noise level from McDonald's is a problem beginning as early as 5 a.m. He believes the requested change would make that situation worse.

Ms. Virginia Kaney, 12250 W. North Avenue, said she hears the sound of the speaker from the drive-thru as early as 5 a.m. and as late as 11 p.m. and would appreciate any effort to diminish that noise. She presented petitions signed by 89 Courtyard residents opposing the new speaker board/intercom ordering system. Ms. Regina Ackerman, 12250 W. North Avenue, said she doesn't hear the noise as much in the winter when windows are closed, but at this time of the year she is very aware of McDonald's presence and would not like to see an increase in volume.

Richard Bachman, 2229 N. 115th Street, said that when the facility was originally proposed, he met several times with Mr. Reilly and a McDonald's representative to discuss issues such as landscaping, fencing, and speakers. Although they agreed to do away with an outdoor speaker, he has often heard a speaker when driving past. The owner of an adjacent four-family has reported that the sound also carries to her building. Mr. Bachman felt it would be wrong to approve the new system given the original contingency that an outdoor system would never be used.

Ms. Jennifer Matovich, N95 W16548 Richmond Drive, Menomonee Falls, supervisor of a number of McDonald's, said that there is a system in place now on the east side of the building that acknowledges the customer before they place their order. That would be moved to the south side and replaced with a better speaker system with a volume adjustment. She pointed out the location of the system on a site plan and said that

it can barely be heard from 20 feet away. The volume could be adjusted if there are complaints. Ms. Matovich also displayed a photo of the system and provided a statement from an audio design manager about sound levels and how they are affected by distance. She was unaware of any current use of a speaker system other than for acknowledging each customer before they drive to the rear to place their face-to-face order.

Mr. Reilly commented that McDonald's representatives originally said they would work to create an environment compatible with the existing apartments, which has not worked out. There is no way to verify their current representations that the new system would be an improvement. Taking them on faith is not acceptable given their history. They should have worked with the community, but no contact efforts were made.

Ald. Didier expressed a concern with customers yelling out their orders facing the apartment complex. Ald. Birschel cited past policy against speaker systems for the McDonald's at 65th and North and a proposed Walgreens. He also described how sound from the Wisconsin Lutheran College stadium carries into neighborhoods. He advocated consistency and advised against setting a precedent.

Moved by Ald. Birschel, seconded by Ald. Donegan to recommend to Council denial of the Conditional Use –

In response to questions from Ald. Herzog, Ms. Welch confirmed that staff recommends upholding the original conditions set in 1997. She explained that the Conditional Use process allows the Plan Commission and Common Council to include conditions that minimize any potentially negative impacts. Any concerns about a use could be brought back to this committee to determine for review. The city would have the option to revoke the Conditional Use, which would revoke the occupancy.

Ald. Herzog suggested a six-month trial of the new system to see if noise is really reduced. Ms. Matovich indicated that, since this is a \$10,000 investment, they might not want to do it on a trial basis. Mr. Reilly said he appreciates the effort to try to find a middle ground, but the burden of proof would essentially be on the residents if it doesn't work, which makes it more difficult to stop it from going forward. He noted that the scope of discussion hasn't included how to address the current problem.

Roll call vote on the motion, Ayes: 6, Noes: 2 (Herzog, Meaux)

Conditional Use at 7111 W. Center Street

The committee reviewed a request by Easter Seals Kindcare and Santosh Yoga, LLC for a Conditional Use in the AA Business District at 7111 W. Center Street for a yoga studio. The Plan Commission unanimously recommended approval. Ms. Welch noted that the city worked with WEDC to redevelop this site. The new building erected there was purchased by Easter Seals for use as an adult day care center. They wish to locate a yoga studio in excess space.

Mr. David Glazer, 4607 N. 109th Street, agent for the applicants, said that Easter Seals purchased the 5,500 sq. ft. building in January and occupies approximately 4,500 sq. ft. Mr. Bryant Mascarendes, an established and well known yoga instructor, would like to establish this as his permanent place of business. Santosh Yoga would have very low parking needs, serving as little as one person at a time up to about 12. He will also be working with some Easter Seals clients. Hours of operation would be 6 a.m. to 10 p.m. to accommodate clients who come before or after work. Mr. Glazer emphasized that this is a very quiet use.

Moved by Ald. Krill, seconded by Ald. Minear to recommend to Council approval of the Conditional Use –

Discussion ensued on the timeline of redevelopment of this site and Easter Seals' tax exempt status, which the Chair ruled is not relevant to the decision. Ms. Welch clarified that the portion of a building owned by a tax-exempt entity that is leased to a for-profit business would be taxable.

Vote on the motion, Ayes: 8

Conditional Use at 10045 W. Lisbon Avenue

Ms. Welch outlined a request by Jeffrey Ligman and Thomas Haslett for a conditional Use in the AA Business District at 10045 W. Lisbon Avenue for a physical fitness studio offering yoga, Pilates, and kick boxing. The Plan commission unanimously recommended approval. Thomas and Dena Haslett, 4334 N. 88th Street, Milwaukee, were present. Ms. Haslett said that hours of operation would be 6 a.m. to 9 p.m.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend to Council approval of the Conditional Use. Ayes: 8

Village Business Improvement District Wayfinding Signage

Mr. Kappel reported that the Village Business Improvement District (BID) has amended the wayfinding project that they have been working on for the past several years. He displayed examples of the previously approved signs and newly designed signs with revised graphics and a new color scheme. The signs would be predominantly blue with black lettering and would have bright green borders and Village logos. Directional arrows would be white on black. Marija Madunic, 7754 Harwood Avenue, representing the Village BID, said that the Catrell Doyle firm assisted with the design.

Mr. Kappel said that city staff would help identify appropriate locations and assist in getting State of Wisconsin approval where needed. The BID would be responsible for production, installation, and maintenance of the signs and would reimburse the city for any related labor expenses.

Richard Reinders, 567 N. 107th Street, commented that it is much easier to read white lettering on a dark background than black on a light background.

Moved by Ald. Krill, seconded by Ald. Didier to recommend to Council approval of the Village BID wayfinding signage as outlined. Ayes: 8

Village Business Improvement District Banners

Mr. Kappel outlined a request from the Village Business Improvement District (BID) for approval of the installation of banners on city light poles within the Village BID area. He displayed samples of two sets of banners, one set of two banners for spring/summer and the other set for fall/winter that would be installed on up to 100 decorative light poles. The request was reviewed and referred by the Board of Public Works.

Staff believes the banners would help boost the visibility and aesthetics of the Village. If approved, staff recommends that the BID be responsible for installation by a qualified contractor approved by the city. That work would include banding the poles, installing and replacing banners as needed, and any upkeep and maintenance. Contractors who have done maintenance on the city street lighting system in the past are among those that would be considered acceptable. Streets on which the banners would be placed include portions of State Street, Glenview Avenue, Harwood Avenue, Underwood Avenue, Wauwatosa Avenue, the pedestrian bridge, and the Harmoniee bridge.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend to Council approval of the installation of banners on city light poles in the Village of Wauwatosa area by a qualified private contractor –

When Village street light poles were changed out, Mr. Kappel noted, the BID was consulted and chose to have planter arms rather than banner arms installed. Banner arms would now have to be added to the poles, but any new poles for State Street would be ordered with banner arms.

The committee discussed the issue of banner locations, the number of banners to be installed, and the BID's cost/budget. Mr. Kappel indicated that some of the poles selected by the BID may not be suitable because of existing signage or other conditions. Once approved by the Council, he will designate staff time for review of proposed locations. Marija Madunic, 7754 Harwood Avenue, representing the Village BID, said that they will look at the feasible locations and then decide which and how many poles to use to create a cohesive look. Once they have a final number, they will get an estimated cost for banner production and will be able to decide if they should be one or two-sided. Funds have been set aside in the BID budget for that purpose, and the goal is to stay within that budget. Ms. Madunic said that the final number could be closer to 50 than 100.

Ald. Donegan supported the concept but expressed reservations about approving it without a more specific plan and a firm number. Other committee members were also inclined to seek further information and some indication of the expertise supporting the number of banners needed. Ms. Madunic assured the committee that much thought went into the overall aesthetics.

(The committee recessed at 9:02 p.m. and reconvened at 9:07 p.m.)

Mr. Kappel displayed a color-coded map showing the proposed banner locations. Using every other pole is proposed, but other municipalities do install banners on every light pole. It is likely the number of approved poles will be fairly close to 100. The banners will come in two sizes—a smaller size for normal light poles and a larger size on the Harmonie bridge. Right now there are 30 banners that city crews change four times each year. Some staff time will be gained by privatizing installation of the new banners.

Roll call vote on the motion, Ayes: 4; Noes: 4 (Didier, Donegan, Meaux, Treis)

Moved by Ald. Donegan, seconded by Ald. Didier to express strong support for the concept with final approval of the plan contingent upon further information including quantities and cost –

Ald. Herzog noted that the plan seems to be workable according to staff and pointed out that the BID was set up as a separate entity and has already budgeted for this project. The Chair saw no reason to review costs.

With consent of the second, Ald. Donegan amended the motion: to express strong support for the concept with final approval contingent upon a final plan including quantities –

Ald. Krill was opposed to micromanaging this proposal. Ald. Birschel commented that the 160 American flags installed on North Avenue between 124th Street and Wauwatosa Avenue is not overwhelming.

Roll call vote on the motion, Ayes: 2; Noes: 6 (Birschel, Herzog, Krill, Meaux, Minear, Treis)

Motion fails; the original motion will be forwarded with a 4-4 vote.

Conditional Use at 510 N. Mayfair Road

Ms. Welch reported that, as directed by the committee at the previous meeting on this item, she drafted a letter to the Taco Bell corporate offices asking them to change the color of the proposed new building at 510 N. Mayfair Road to something less intrusive. A copy of her letter and their response denying the request was included in the committee's packets.

Richard Lepping, 1634 Sherman Avenue, Madison, said the letter from the corporate office is not surprising to him. He tried to ask them what happens if there is a stalemate, and their answer was to bring it back and they would address it again.

Richard Bachman, 2229 N. 115th Street, related his perception of conditions and clientele at the restaurant on two recent visits. The Health Department checked out some of his concerns but found everything to be within reason for a busy day. On his first visit, the manager asked some customers to leave because they were causing a disturbance. On the second visit, a large group of 8-12 adults, teenagers, and children caused him some concern. He reported to Mr. Lepping that some seemed to be getting food without anything being rung on the register, but Mr. Lepping found nothing out of order. Mr. Bachman indicated that the conditions and the type of behavior he observed make him concerned about having a restaurant like this in Wauwatosa, especially with outdoor seating. Mr. Lepping has assured him that he will have better control at a new facility.

Richard Reinders, 567 N. 107th Street, thanked those committee members who have visited the property. Acting as a representative of a large group of neighbors, he said they all agree that they would not grant an easement to build a retaining wall behind the site. They realize that their properties abut commercial and are not opposed to development of that property but simply oppose this particular development or plan. Current problems of concern are issues related to the clientele, noise, and trash. The hours of operation are completely inconsistent with those of similar businesses. McDonald's, for example, has a 10 p.m. closing. Not requiring a face-to-face, two-window system, as requested four years ago, and allowing a speaker box is also inconsistent with other operations. The primary issue of concern for abutting residents, however, is the 10-foot wall topped by an eight-foot fence than would span six backyards.

Damion Forrest, 545 N. 107th Street, said his property would be the most affected by the wall, which would be built where they now see sunlight and an open field. The location of the proposed new building also poses a huge problem in terms of customer noise since he does not believe the type of clientele would change. There will be more area in which people can gather and be disruptive.

Ald. Donegan asked if a new Taco Bell could be built elsewhere on the site in a way that would not require such a dramatic change in the landscape. Where there is now open space with bushes and trees there will be a wall and fence in order to accommodate the new grade. Ms. Welch said that, regardless of how it is handled, there is an existing grade change between the residential properties and the commercial parcels along Mayfair Road that ranges from approximately six to 10 feet. The only way to make the site closer in grade to the residential properties would be to excavate and lower the grade, which would make it below the level of Mayfair Road. Currently, the change in grade is accomplished by more of a slope rather than a wall, but the property owner is technically allowed to build a wall. The city typically allows a 4 ½ ft. fence height or 6 feet when needed for an additional barrier between commercial and residential. The 8-ft. fence was proposed two years ago in response to a request from neighbors for enough height to screen Taco Bell clientele from peering into their backyards. The height can be reduced if neighbors now think it would be too high. A plan that includes a drive-thru and adjacent parking requires going up to the property line and dealing with the grade change. The wall height slopes down to about one or two feet at the northern end. The site itself will not be leveled out but will reflect the downward slope of Mayfair Road from Blue Mound Road to Wisconsin Avenue.

Architect Jim Gersich, 313 W. Beltline Highway, Madison, explained that the wall would be zero at the north property line and increase to a maximum of 10 feet at the very south end, being fairly consistently 10 feet for much of its length. Because the parking lot is being internally drained to catch basins along the property line, it will slope slightly toward the north.

Ald. Herzog asked if it would be possible for the applicant to present a 3D rendition or some other way to project how light and shading would be cast on the surrounding area. Mr. Gersich said they have already done that in previous efforts; drawings have been shared with residents. He displayed elevations of the retaining walls from all perspectives and a wide variety of before and after views between the buildings. Mr. Gersich

commented that a 4 ½ ft. fence would be inadequate to shield neighbors from headlights and visual contact; a 6 ft. fence might be more preferable than the requested 8 feet.

In response to questions from Ald. Herzog relating to ways to minimize the wall height, Mr. Gersich said that one way would be to lower the floor elevation of the building, which would make it lower than the adjoining elevation of the road. They have placed the new building at what is the “happy medium” of the downward slope of the site. Using a site drawing, he pointed out where the retaining wall would start and end, affecting six, or about half of the properties that abut the site. They do not intend to divide the parcel. Mr. Gersich displayed samples of the type of stones to be used. They would be cut to fit and step back as they go up. The wall would be wholly contained on Taco Bell property. Unlike concrete block retaining walls, it would not require footings or any type of underground construction. Drainage off the top of the wall will follow its natural course toward the north, matching the slope of Mayfair Road.

Noting that the residents are not opposed to commercial use, Ald. Herzog asked how this site could be developed for commercial use short of putting in some kind of retaining wall. Ms. Welch said she does not believe that would be possible; whatever goes there would require some form of retaining wall. The intersection of Blue Mound and Mayfair Roads was raised to accommodate railroad tracks underneath, which is why we have this grade issue between Mayfair Road properties and the residences behind them at the original grade.

Ald. Donegan asked if a retaining wall of this height would be needed if a new Taco Bell were built where the current one now sits and parking remains as it is. Ms. Welch said that there would still be a grade change. The key issue with the new plan is getting the depth that allows parking to be closer to the entrance so that customers don't have to cross the drive-thru lane.

Mr. Lepping said there are three issues that dictate relocating the building. Cars now come in close contact with pedestrians and also block the entrance and stack around the corner, even backing up onto Mayfair Road at times. If the second driveway could be relocated by a number of feet, it is possible the building could stay where it is, but the State has determined that is not possible. In order to stabilize the top end of the property and deal with runoff, they need a curb and gutter; hence, some form of retaining wall is needed. With this plan, they have reduced the overall footprint of the building and created about as much green space on the south as the north end. This is the plan they have talked about at a number of meetings with neighbors and overall for the past couple of years. They walked away from the original plan by a different developer that included additional retail with a retaining wall end to end on the entire site. In this plan, they cut the retaining wall in half and have gone back to green space. The south end of the property will have a decorative fence but no retaining wall. As a result of neighborhood input, over time they have offered neighbors landscaping allowances, actual plantings, maintenance to the plantings, and input on the type of materials used.

Asked about further development of the green areas of the site, Ms. Welch said that the Plan Commission stipulated that it would need to remain green space. Council approval would be needed to develop it in the future.

Ald. Donegan commented that this is a very invasive development that is adverse aesthetically and financially to five or six residences. He recalled that the height of the condo development on the State Street Western Metals site was reduced from four to three stories due to concerns of residents overlooking the site and said he finds this is much more invasive being in what feels like the residents' backyard. He is also concerned about operation of the facility and feels Mr. Bachman's concerns are legitimate. We should be sure it is built in such a way that it protects the neighborhood's safety and quiet. We should be very aware of drive-thru hours, making that the same as inside hours, and parking spaces should be visible to police. Ald. Donegan said he would like to see more compromise on matters pertaining to safety and aesthetics and is disappointed with the response from the corporate office. He is aware of recently constructed Taco Bell restaurants that don't follow the corporate specs and would like to see them cooperate more.

Moved by Ald. Herzog to recommend approval of the Conditional Use –

Motion fails for lack of a second.

Moved by Ald. Didier, seconded by Ald. Birschel to recommend to Council denial of the Conditional Use. Ayes: 7; Noes: 1 (Treis)

Proposal by Toldt Development for Public Works Site South of Walnut Road

Ms. Welch said that in discussions last fall on development of the 18 acre public works site south of Walnut Road, this committee selected Toldt Development as the preferred developer if residential is chosen as the preferred use. Since that time, the committee and the Common Council entered into a series of discussions with Cobalt Partners for an industrial-type use, but that process did not proceed to fruition. Mr. Toldt is now reaffirming his interest in the site and asking the committee to confirm their interest in residential development. Among the committee's options are:

1. If choosing to pursue residential development with this developer, authorize staff to enter into negotiations and provide comments or direction to guide those negotiations;
2. If the committee does not want to pursue residential development, provide staff with guidance on the type of use desired;
3. If the committee does not want to see the site developed at all, state that position.

Helmut Toldt, 4040 N. Calhoun Road, Brookfield, said he is prepared to answer any questions or re-present any information the committee desires. Atty. Brian Randall, Friebert, Finerty & St. John, S.C., 330 E. Kilbourn Avenue, Milwaukee, said he has been retained by Mr. Toldt and has prepared a purchase agreement, which was submitted it to the City Attorney.

(The committee recessed at 10:05 p.m. and reconvened at 10:13 p.m.)

Mr. Randall said that Mr. Toldt continues to be interested in purchasing the 18-acre site as described in an open 2002 RFP that stated that a variety of uses would be considered. At that time there were six multi-family housing proposals and one for a sports complex that was later withdrawn. A 1998 RFP yielded several warehouse proposals that were never pursued. At their October 31 and November 14, 2006 meetings, this committee evaluated the residential proposals and ranked Mr. Toldt's proposal #1. At the November 14 meeting, the committee elected to pursue the Cobalt proposal that ultimately was not finalized.

Mr. Randall emphasized that Mr. Toldt was interested in 2002, in 2006, and remains interested after five years in developing a residential project with a five-year buildout that would increase the city's tax base by bringing underutilized tax exempt property onto the tax rolls. The lack of response by light industrial users over the past years shows there is not a demand for that use.

Mr. Randall identified three issues that they would address:

1. Traffic generated by over 700 residents – They would do a traffic study before the proposal is reviewed by the Plan Commission so they can answer neighbors' questions and look at the real issues.
2. Environmental concerns – Although available information has been shared, the city will benefit by the environmental study they would commission.
3. Compatibility of Use – Recognizing that the site is adjacent to the public works facility, they have a good plan for positioning uses more accepting of noise and traffic issues, such as apartments. The development agreement would clearly state that they would not at any time view the city's operations as a nuisance.

Summarizing the committee's options, Mr. Randall said that rejecting residential use or not selling the site at all are not good choices. Rejecting the proposal will not send a good message to the development community in general in terms of standing behind an RFP. If considering not selling the site, Mr. Randall pointed out that it is

underutilized and has no asset value to the city. The city has a lot to gain by selling the land. There is little downside to moving forward.

Mr. Randall said that they will bear the burden of proving they can make residential work on the site. They believe they could close and bring it to the tax roll within a year of Council action. He referred to articles in WauwatosaNOW discussing how population decreases affect the school system and eligibility for certain grants; development will grow the population base. The development would be the caliber and quality of Mr. Toldt's nearby 115th Street development. It would be low impact and would not overtax city services. It would have private roads, and they would provide sanitation and recycling pickup. Mr. Randall asked that the committee move the proposal to the next level and hold them to a high standard.

Scott Yauch of Cobalt Partners, 135 W. Wells Street, submitted a letter stating their interest in pursuing their earlier proposal that involved moving the county's fleet operations on Watertown Plank Road to this site, freeing the county site for redevelopment. His submittal included a conceptual plan for the Watertown Plank site that he said includes significant residential units. He requested an opportunity to take the process forward.

Mr. Randall stated that Mr. Toldt's proposal does not involve a land swap or any other site.

Ald. Birschel suggested holding this matter for two weeks, which would provide an opportunity to review what has been submitted and confer with staff.

Moved by Ald. Birschel, seconded by Ald. Krill to hold this matter until the next meeting, June 26. Ayes: 8

Ald. Donegan asked for this to be the first item on the next agenda.

Proposed Ordinance – Check Cashing / Convenient Cash Establishments

A proposed zoning code amendment concerning regulation of convenient cash businesses has been reviewed by the Plan Commission and recommended for approval. At this time, it is necessary to set a date for a public hearing before the Common Council. Following that hearing, the matter will return to this committee for review.

Moved by Ald. Krill, seconded by Ald. Donegan to recommend to Council introduction of the ordinance and adoption of a resolution setting a public hearing date. Ayes: 8

Proposed Ordinance – Trellises and Fences

A proposed zoning code amendment concerning regulation of trellises and fences has been reviewed by the Plan Commission and recommended for approval. At this time, it is necessary to set a date for a public hearing before the Common Council. Following that hearing, the matter will return to this committee for review.

Moved by Ald. Krill, seconded by Ald. Donegan to recommend to Council introduction of the ordinance and adoption of a resolution setting a public hearing date. Ayes: 8

The meeting adjourned at 10:36 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin