



CITY OF WAUWATOSA  
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**COMMUNITY DEVELOPMENT COMMITTEE MEETING**  
**Tuesday, January 31, 2006**

PRESENT: Aids. Becker, Birschel, Kopischke, Krill, Krol, Subotich, Treis -7

EXCUSED: Ald. Sullivan

ALSO PRESENT: N. Welch, Community Dev. Dir.; C. Ledesma, City Clerk; Aids. Maher, Grimm

Ald. Kopischke as Chair called the meeting to order at 8:21 p.m.

**Statewide Voter Registration System**

Reviewing a memo to the committee, City Clerk Carla Ledesma reported that she is seeking adoption of a resolution authorizing her to enter into agreements necessary to participate in a statewide voter registration system. There is no funding issue. This basically indicates that we intend to abide by the requirements of the program.

Moved by Ald. Krill, seconded by Ald. Treis, to recommend to Council adoption of a resolution authorizing the City Clerk to enter into the necessary agreements. Ayes: 7

**Conditional Use at 6440 W. North Avenue for Sale of African Wine**

The committee reviewed a request by Murtis Grant Acquah for a Conditional Use in the Trade District at 6440 W. North Avenue to sell South African wines in an existing gift store. Ms. Welch reported that there will be no on-premises consumption. The Plan Commission unanimously recommended approval, with hours of operation of 10 a.m. to 7 p.m. daily. There are two letters of support on file, one from Ald. Sullivan and one from Donald and Kate Hill, Dakonte, LLC, 6434 W. North Avenue. Ms. Grant Acquah was present. The Legislation, Licensing and Communications Committee has recommended approval of a liquor license.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend approval of the Conditional Use with hours of operation of 10 a.m. to 7 p.m. daily, contingent upon obtaining the required licenses and permits. Ayes: 7

**Change of Zoning in Hart Park Area**

Ms. Welch outlined a request by the city for a change of zoning in the Hart Park area from AA Single Family, BB Two Family, DD Eight Family, AA Business, and AA Light Manufacturing District to Park and Open Space District. The area is generally bounded by 72nd Street on the west, the city limits on the east, the railroad tracks and River Parkway on the north, and the Menomonee River on the south. The Plan Commission unanimously recommended approval.

Moved by Ald. Treis, seconded by Ald. Becker to recommend adoption of the proposed ordinance implementing the zoning change –

Ms. Welch noted that this land was acquired as part of the Hart Park flood management project. The proposed zoning is appropriate for the proposed park that is to be created. The new park will roughly double the current 18-acre size of Hart Park.

Vote on the motion, Ayes: 7

### **Conditional Use at 10212 W. Sunset Avenue for a Community Based Residential Facility**

The committee reviewed a request by ORP Real Estate Holdings LLC and Homes for Independent Living of Wisconsin LLC for a Conditional Use in the AAA Single Family Residence District at 10212 W. Sunset Avenue to operate a six-bed Community Based Residential Facility (CBRF) for physically disabled adults. The Plan Commission recommended approval by a 4-2 vote. Ms. Welch explained that Conditional Use approval is necessary because the current CBRF population in the 8th District is greater than 25 persons and the facility is within 2,500 feet of two other licensed facilities. She displayed a map illustrating that distance and the locations of other homes. There are currently five CBRFs in the 8th District and some others nearby in Milwaukee. Although the number of facilities in this area is of some concern to area residents, staff has been unable to find any standard that defines over-concentration.

Attorney Dennis Burg, representing ORP and Wisconsin Homes for Independent Living, 1746 Executive Drive, Oconomowoc, said that city departments have indicated that the operation of the CBRF would not be burdensome to any city services. The facility will serve developmentally and physically disabled individuals who are covered by the Fair Housing Act and the Americans with Disabilities Act and are in need of a group home in order to be more assimilated into the community.

Annie Balestrieri, Oconomowoc Residential Programs, 1746 Executive Drive, Oconomowoc, said their program operates under the auspices of the State Department of Health and Social Services, which dictates that those served be integrated into communities in residential homes. Addressing issues raised at earlier meetings, she rhetorically asked where in America we have the right to choose our neighbors. Regarding the need for school-age population, she noted that many young people buy homes and remain childless but still support the school system through taxes, as they will. They have found that most neighbors not only accept but enjoy most of the residents in their group homes. This company is employee owned, and staff is committed and determined to provide the best care and environment possible. Any profit they earn is put back into programming and continuing staff education. They consider their work a vocation and believe caring for those less fortunate is a fundamental responsibility.

Comments in support of the proposal submitted by Donna and Thomas Woehrle, 10204 W. Feerick Place, were read by the Chair. They feel that existing CBRF facilities in the neighborhood are well managed and maintained and the residents are friendly, well-behaved citizens. Mr. Woehrle added that the issue of school-age children is irrelevant. Six students would not solve the demographic problems of the schools.

Randy Adams, 10242 W. Wright Street, spoke on behalf of his mother-in-law who lives in the same block as the proposed facility. He was concerned about lack of disclosure regarding purchase of the home and subsequent remodeling, which was started without permits. He submitted photos of the home showing van-type transport vehicles that are constantly parked in the driveway along with two or three cars. They wouldn't need that vehicle on a 24-hour basis and should park it elsewhere or use other transport services, he felt. He also objected to a warehouse-type ramp and railing installed at the front of the house.

Barbara Kintis, 10144 W. Sunset Avenue, presented additional photos showing cars in the driveway. The three-car garage is never used, she said. She said she has no objection to the people but to the way it is being handled.

Jim Josten, 10112 W. Nash Street, said there are now five licensed CBRF facilities in the 8th District with 188 beds, representing over 3% of the district's population. Referring to the 1% and 2,500-foot rules, he said that if there were a district in which to begin to look at upper capacity, it would be the 8th District.

City Attorney Kesner explained that the city's ordinance refers to 25 persons or 1% in the aldermanic district. Similar percentage rules have been found to be in violation of fair housing acts and other rules found to be unenforceable. There may be a point at which saturation makes a district no longer residential but institutional, but no one has agreed on that number. There is no published case law in Wisconsin. A case currently in litigation and working its way through the court system doesn't seem to be favorable toward enforcing a 1% rule.

Ald. Maher, 8th District, said that federal law really ties our hands and makes being able to deny this application unlikely. He has been in contact with Congressman Sensenbrenner and Senator Feingold and has been working with the City Attorney on sending something to federal lawmakers to explain our issues and get some guidance. As with the CBRF at 103rd and Ruby, he believes that voting against this facility would put the city in jeopardy of a lawsuit, which he is not prepared to do.

Asked about the statement regarding lack of permits, Ms. Welch said that they did apply for a permit upon being informed of the need to do so. Ald. Maher said that he observed that work was going on and actually went there with a city inspector. They had the necessary permits at this time. It was frustrating, he said, that he continued to be told by the contractor that it was not a CBRF. Ms. Welch added that the occupancy permit was granted for single family use only, with a notation that a CBRF would require zoning approval.

The Chair asked about formation of a community advisory committee. Tracy Noble, 1650 S. 108th Street, West Allis, said letters inquiring about interest were sent to committee members at the beginning of January. Only three were interested in continuing. The next meeting will be in mid-February. Although others may have expressed interest at the Plan Commission meeting, no one has contacted her. At that meeting she also spoke to Ald. Treis about forwarding any names. Mr. Burg explained that Ms. Noble is a regional director and the person responsible for operation of that home.

Ald. Birschel raised questions about nursing care, recreational programs, licensing, and monthly fees/payments. Mr. Burg said this is not a skilled nursing facility and residents are not in need of extensive medical care. If they need 24-hour nursing care, they would be placed in a nursing home. Ms. Balestrieri explained that there is a waiver process that would allow someone who needs more than three hours of nursing care to stay in the facility. Families may visit residents, who may also go out into the community. The caregivers are not required to be licensed. Ms. Noble said that their funding is through Milwaukee County; they do not receive any Title 19 payments.

Ald. Treis commented that the 8th District has many ranch homes that are suitable for handicapped individuals. He also acknowledged federal laws that restrict state and local governments in making certain decisions. He spoke of the growth in the use of group homes and commented on the pros and cons of small facilities and large ones like San Camillo and Luther Manor. He mentioned quality of care, emphasizing that his concern is with the patient and the community, not the provider. He noted that seniors represent 25% of the population of Wauwatosa. This company has stated that they have six group homes in Milwaukee County and two of them are

in the 8th District. Saturation of the 8th District has to be stopped, he said, and we also have to look at what is best for handicapped people. He felt that the school system is hurt when larger homes that would be available to families with more children are taken off the market.

Moved by Ald. Krill, seconded by Ald. Kopischke to recommend approval of the Conditional Use for a six-bed Community Based Residential Facility subject to the conditions recommended by the Plan Commission including required licenses and permits and meeting the requirements of Chapter 24.51.020 of the City Code pertaining to conditional uses and specifically CBRF requirements –

The Chair commented on efforts to get clarity at the federal level, which is probably the bigger issue that needs to be addressed. He felt that this CBRF should not be a litigation test case. As a Conditional Use, the committee can review it and impose conditions if problems arise. He noted that the Plan Commission looks at specific criteria when evaluating the use, and there is federal and state jurisdiction over the actual operation. This committee considers whether it places an undue burden on the neighborhood, and he believes it does not.

There were further comments by committee members regarding the number of CBRF facilities in the 8th District and the federal laws that prevent the city from denying that use. Residents and representatives of the facility were encouraged to work together to address any concerns that arise.

Ald. Krol asked about the issue of parking a commercial vehicle in the driveway. The City Attorney indicated that staff would investigate to determine if it can be stored there overnight. Ms. Balestrieri said that it is an accessible vehicle, not a commercial vehicle.

Vote on the motion, Ayes: 6; Present: 1 (Treis)

(The meeting recessed at 9:30 p.m. and reconvened at 9:36 p.m.)

**Change of Zoning at 1215 N. 62nd Street**  
**Preliminary Plan Approval for Business Planned Development at 1215 N. 62nd Street**

The committee reviewed two requests by David Israel relating to 1215 N. 62nd Street: 1) for a change of zoning from AA Light Manufacturing to Business Planned Development; and 2) for Preliminary Plan Approval for a Business Planned Development for a multi-family residential development. The Plan Commission unanimously recommended approval of both requests.

Ms. Welch reported that the project consists of 256 condominium units on the 10-acre former Western Metals property. It includes eight moderate density town homes and medium density apartment-style buildings. Surface and underground parking would be provided. Staff is working with the developer to address some outstanding issues. A water main being constructed on State Street will serve this development and others in that area. The City Engineer believes that sewer credits will be sufficient, although final calculations are contingent upon the final plans. A traffic review indicated that 90% of the traffic will likely access State Street to the south via 62nd Street and is not likely to go north to Milwaukee Avenue. As a Business Planned Development, the applicant would have to return for final plan approval. Any concerns should be raised at this time, however, since final approval is based, by ordinance, on meeting any concerns with the preliminary plan that are identified now.

Stu Larose and Jeff Bogart of Eppstein Uhen Architects, 333 E. Chicago Avenue, Milwaukee, were present representing the developer. Mr. Bogart displayed renderings and described the proposed project. There is a four-level condominium building with a single level of structured parking oriented around an interior courtyard and garden plaza. An opening provides a connection to the retail area to the west. In addition, there is a cluster of eight direct-entry, three-story townhouse units. Ultimately, they plan to develop two townhouse clusters oriented around a court. Residents will exit to State Street via a right turn on 62nd Street. A future building would be similar with structured parking, a roof plaza, and a series of flat-style residential buildings. There will be a variety of architectural scales and variations in style and form. There will be private drives and sidewalks forming a walkable neighborhood. The project will be sited away from the foot of the bluffs, treating that area as more of an amenity. The site would introduce more green space and would be an extension of the neighborhood. The main traffic circulation through the project is a loop. A controlled fire lane will be used to provide fire access only. A total of 169 spaces of structured parking is provided based on one space for every bedroom in those units. The townhouses each have private two-car garages on the lower floor within the footprint. Off-street parallel parking for guests is provided along the private drives. It is anticipated that parking needs will be accommodated within the site for both residents and guests. There will be an arrangement with Derse to accommodate their staging and current parking needs.

The Chair read a written comment in opposition to the proposal from Michael L. Zeimet, Jr., 14800 W. Maple Ridge Road, New Berlin/Eckert Door Company, 6510 W. State Street. Mr. Zeimet commented that manufacturing businesses are being pushed out and questioned placing a condo facility behind a foundry and wood door manufacturing plant.

John Huwiler, 1279 Martha Washington Drive, submitted a number of questions about notification of residents, zoning procedure, cost of water construction, routing of streets in the project, duration of project implementation, and traffic. He voiced concerns especially about handling traffic volumes and possible use of Martha Washington Drive. He felt the project would place an undue burden on the neighborhood and isn't right for the city.

Jeannine Rowe, 1262 N. 68th Street, said traffic is also her major concern, especially considering the current increased volume on 68th Street. She felt that further thought should be given to how State Street and 68th Street would be impacted.

Gary Kandziora, 6125 W. Martin Drive, felt that the drawings provided by the developer should show the surrounding residential and business areas, including Martha Washington Drive, Derse, and the Reserve apartments as well as his house. He described early morning tractor-trailer activity at Derse plus dump truck and van traffic that residents of this project would be subjected to. He noted that townhouses would be 20 feet away from his welding shop and wondered if noises from his shop would prompt complaints.

Richard Fenner, 1261 N. 68th Street, submitted photos of traffic conditions on 68th Street. He was concerned about future traffic as well as upcoming 24-hour water main work and construction of an Applebee's restaurant.

Mary Ann Grages, 1307 Martha Washington Drive, was concerned about the developer scrapping the plan and developing some other type of business if the condos don't sell. She felt that this project would be a detriment to a lovely, quiet residential area and was very concerned about traffic on Martha Washington Drive and potential overflow parking. She suggested slowing down and seeing if the project can be scaled back.

Spencer Hoyt, 1298 N. 63rd Street, asked if "walkability" referred to the project's residents or the community. He was concerned about privacy and compromising the intimate nature of the neighborhood at the top of the bluff.

He spoke of traffic and infrastructure concerns and the need to define volumes and capacity. He cited 2004 daily volumes of 12,200 on 68th Street and 10,600 on State Street, per the Wisconsin Department of Transportation (DOT). He said that proactive efforts should be addressed here. He later added, for comparison purposes, that traffic counts at Highway 100 and Capitol Drive total 14,000. He noted that, although the Walgreens and Sentry sites have been described as separate parcels, they are also owned by the applicant, David Israel.

Ald. Grimm, 4th District, questioned separating the zoning change from the planned project and said that the neighbors should have some input and should be notified of meetings. He cited potential contamination abatement costs and asked who will pay and also questioned how preliminary plans could be approved without direct access to State Street. He said that when drivers can't find easy exit onto State Street, more traffic will head for Martha Drive and Milwaukee Avenue. He cited a December 2005 article in American City and County magazine headlined, "Downside of Condo Boom" and noted that there has been no talk of reducing the size of the project.

Todd Lorbecki, 1275 N. 68th Street, said he likes the building but questions the traffic and the location right next to Grede Foundry. He feared the developer would not be able to fill the units and would go out of business.

William Fenner, 1261 N. 68th Street, related current problems with 68th Street traffic and concerns about future levels. He asked who will pay for road repairs after heavy equipment goes through. He was also concerned about the project's need for city services such as leaf collection and questioned whether the city's fire protection equipment would be adequate for the project.

The Chair proceeded to address the questions raised, as follows:

- Notification: Property owners within a 200-foot radius are notified of Plan Commission meetings. It is expected that those who are interested will follow up on the announcement there of additional scheduled meetings.
- Zoning change procedures: Zoning changes like this do move forward with a project plan. The hearing two weeks ago was required for the zoning portion only, however, so only that matter could be discussed.
- Water main construction: Ms. Welch said that the intent is to pay for the water main out of TIF expenditures. Any development in that area would increase assessed values and, in turn, generate additional taxes.
- Access to retail to the west: The interior streets will not go through to Walgreens, but Mr. Bogart indicated that the sidewalks will connect.
- Implementation period: Mr. Bogart explained that this is a phased developed based on the degree of market absorption. Condos would be presold prior to committing to construction. Depending on interest, future phases may or may not be built. Building in phases will better manage traffic and construction.
- Conversion to other uses: If they cannot move forward with the approved plan, they would have to come back to the city for new approvals.
- Traffic concerns: Mr. Larose said that a traffic study of the surrounding area was done by National Survey, R. A. Smith, who also works for the DOT. It can be made available for review. The study concluded that during rush hours, 7-9 a.m. and 4-6 p.m., 1-6 cars would be added every 5 minutes. Ms. Welch clarified that the study concentrated on 62nd and State as the direct outlet.

Ald. Becker noted that the Reserve was not allowed to exit on 62nd Street and questioned why this project should be able to do so just because they don't have frontage on State Street. He suggested stopping the process now and asking the applicant to come back when there are plans for an exit on State Street. He agreed with continuing to answer questions raised tonight before making that motion. Mr. Larose said that Mr. Israel has talked to all or most of the property owners abutting State Street. The price they sought was high for just an access road, but he

is still talking to those people. He was unable to be here tonight but would be better able to address those contacts.

- Parking: Mr. Bogart said that there will be 33 spaces for guests on the internal street system, which is within planning guidelines. Any needs beyond that would be very sporadic, just as in other neighborhoods when someone has a big party. The clubhouse is a private party room for residents that will accommodate 40 people.
- Walkable community: Mr. Larose said that there will be public access through the pedestrian sidewalks. The connection from 62nd Street is for public use. Only the drive for fire access will be gated since it is not a vehicular through street.
- Landscaping between bluff and development: Mr. Bogart said that currently there is no landscaping to deal with the rooflines along the bluff. A walkway along the foot of the bluff will be managed and cleared out so that desirable trees can flourish. The view from the bluff would be of landscaped roof areas and courtyards. The percentage of green space for the entire site is currently less than 18% but will increase to 55%. The character of the top bluff will be unchanged, since they do not control that area. Ms. Welch indicated that the area in question may be under the jurisdiction of Milwaukee County. Mr. Larose said that the building would be about 65 feet tall to the ridgeline of the roof at that point. The high point of the bluff is about 66-68 feet. The southeast corner of the clubhouse building is a few feet below the top of the bluff. The town homes are probably 30-40 feet in height, extending two-thirds of the height of the bluff. Ms. Welch confirmed that the bluff is approximately 60-65 feet high on the western portion and tapers to the east.
- Soil remediation costs: Ms. Welch said those costs are assumed to be the developer's expense.
- Density: Ms. Welch said density here would be 25 units per acre. Density of the Reserve is 25/acre, Hart Park Square is 39/acre, the Lutheran Home is 47/acre, Hawthorne Terrace is 23/acre, Serafino Square is 28/acre, Tosa Glen is 29/acre, and Village View is 31/acre.
- Fire protection: Ms. Welch said that the situation here is similar to that with high rise buildings at the Froedtert campus; i.e., at a certain height, fire prevention systems are required. In this case, the building must be fully sprinklered and include any other safety measures that the fire marshal deems necessary.
- Reconstructing roads: Ms. Welch reported that State Street is scheduled to be repaved in the near future. Damage to city streets can be assessed against a developer; they can be required to repair extensive damage.

Moved by Ald. Becker, seconded by Ald. Subotich to hold this matter pending further efforts by the applicant to provide direct exit to State Street –

Ald. Becker said that when this project originally came forward, the applicant said there might possibly be a way to provide access directly to State Street. After we find that out, we can decide about moving forward.

Ald. Birschel commented on the need for multiple entrances for emergency vehicles and the possibility of an easement next to the Walgreens site. He recommended requiring that access for approval of the preliminary plan.

The Chair said that traffic has been his biggest concern, especially any additional traffic on Martha Washington Drive. He also is concerned about possible difficulties at 62nd Street that could, at some point, require traffic control that, in turn, could draw traffic down Martha Washington. Although there may be issues with a State Street access, he saw that as a much better option. He commented on the desirability of this type of development in this location. He said this is an excellent architectural firm and their proposal is attractive, but the committee needs to see more effort on a State Street exit.

With consent of the second, Ald. Becker clarified that the matter should

be held for two weeks or until the applicant is able to come forward with a response on a State Street exit. Vote on the motion, Ayes: 7

The meeting adjourned at 10:46 p.m.

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Carla A. Ledesma, City Clerk  
Wauwatosa, Wisconsin