



## CITY OF WAUWATOSA

7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
Telephone: (414) 479-8917  
Fax: (414) 479-8989

### COMMUNITY DEVELOPMENT COMMITTEE MEETING

Tuesday, June 13, 2006

PRESENT: Alds. Birschel, Didier, Donegan, Herzog, Meaux, Sullivan, Treis -7

EXCUSED: Ald. Krill

ALSO N. Welch, Community Dev. Dir.; A. Kesner, Interim City Admin./City Attorney

PRESENT: N. Kreuser, Health Officer

Ald. Treis as Chair called the meeting to order at 8:10 p.m. -7

#### **Proposed Public Art for Retail Development at N. 124th and W. Burleigh Streets**

Ms. Welch reported that the requirement for public art in the parking lot of the retail development at 124th and Burleigh was among the conditions of approval negotiated with Continental Properties. Accordingly, Continental has hired local artist Richard Taylor to produce an artwork. Per the developer's agreement, this committee and the Council would review the work and confirm that it meets anticipated standards. The committee is not required to act an aesthetic board but to determine if it is the type that is acceptable on this site.

Emmy Lou Barnes of Continental Properties, P.O. Box 220, Menomonee Falls, displayed a drawing showing the proposed location in the middle of the parking lot. It would be surrounded by a sidewalk and landscaping and accented by decorative lighting in each of the four corners.

Richard Taylor, 3007 N. Newhall Street, Milwaukee, displayed a scale model of the sculpture. He described his interpretation of the industrial theme, which is derived from the site's former use. The pedestal is about 3 ½ feet tall, and the sculpture itself would be about 14 feet tall. It would be uplighted at night and appear to glow from within, similar to his work at the Milwaukee Public Library. Constructed of aluminum covered with a very tough, industrial paint, it would not rust and could be washed many times with graffiti solvent, if necessary. The glossy surface will shed rain and snow. The colors will compliment and stand out from the warm cream color of the building's façade and the nearby trees. A sidewalk will lead directly to the sculpture, and it will be visible from the street. There will be no seating in that area. Asked about the possibility of children climbing it, Mr. Taylor said that is always a possibility, although the height of the pedestal would deter smaller children. He has never had a problem with children hurting themselves or harming a sculpture.

Moved by Ald. Herzog, seconded by Ald. Meaux to recommend to Council approval of the proposed sculpture as being in compliance with requirements. Ayes: 7

#### **Request for Repeal of Ch. 8.12 – Smoke Free Restaurants**

In a memo dated June 1, 2006, Ald. Herzog requested reconsideration of the restaurant smoking ban that is scheduled to take effect July 1 in accordance with the provisions of the smoke-free restaurants ordinance adopted November 18, 2003.

Dr. Nancy Kreuser, Health Officer, distributed handouts and summarized the concerns about environmental tobacco smoke (ETS) and its effect on non-smokers as a “Class A” carcinogen that causes lung cancer, heart disease, emphysema, and respiratory. Employees exposed to ETS on the job are 35% more likely to get lung cancer. Restaurant and bar workers have three to six times more exposure to ETS than other workers. Dr. Kreuser also summarized the costs of environmental tobacco smoke in the U.S. in terms of “excess” medical care, lost wages, reduced services, and costs associated with disabilities. There are 26 smoke-free cities in Wisconsin including Appleton, Oshkosh, Fond du Lac, Madison, and Kenosha, a number of smoke-free workplace states, and several 100% smoke-free countries.

Dr. Kreuser outlined the history of Wauwatosa’s ordinance, which was brought forth by a community group following a community health assessment survey that indicated that 73% of adult residents supported making all Wauwatosa restaurants smoke free. Implementation steps to assure a smooth transition to smoke-free dining began in January 2006. Updates have been provided in the City Administrator’s weekly memo to Council members and in the health department’s monthly report, and educational inserts appeared in city newsletters. A letter sent to all restaurant licensees in March reminded them of the upcoming implementation date and provided information and ordinance website links. About 15-20 calls were received, most relating to clarification of ordinance language or signage. To date, three free-standing taverns have submitted paperwork for exemptions from the ordinance, and there have been three other inquiries without any further action.

Dr. Kreuser related a recent phone conversation with the manager of the George Webb restaurant on Blue Mound Road, which went smoke-free after April 2005 remodeling. Staff and patrons, including smokers, were polled and all said it was the most positive thing the restaurant could have done. Their Marquette campus site has also since gone smoke-free.

Ald. Donegan said the issue seems to have been thoroughly handled 2 ½-3 years ago in terms of public comment, expert testimony, and deliberation by the Council. He commented that it is denigrating to that process to bring it back for repeal at this time. Before continuing discussion, he suggested determining if there is support for the request.

Ald. Herzog said that he brought this issue back not just because the Council has new members but also because it was thought three years ago that Milwaukee, West Allis or Brookfield would have a smoke-free ordinance by now or there would be a statewide ordinance that creates a level playing field. He could not recall ever enacting something with such a long lag time between passage and enactment. There have been two local aldermanic elections since that time. Although 26 communities have smoke-free ordinances, there are 1,800 communities in the state, so a majority do not have a ban. Governor Doyle has opposed a statewide ban. It is important to look at the impact of Wauwatosa being an island among other area communities.

Moved by Ald. Herzog to repeal the smoking ban –  
Motion failed for lack of a second.

The Chair informed attendees that any e-mails sent to Council members and not sent to the City of Wauwatosa are not included in the official file on this issue unless they are turned over by one of the alderpersons. Ald. Didier submitted a letter and a list of 17 phone calls she received in support of the ordinance.

Kathy Barry, 608 N. 62nd Street, submitted a letter supporting the ordinance. Although there has been some change in Council membership, she said she would be surprised if their concern for the health of the population has changed. Businesses that have gone smoke-free have not had a problem; their business has increased, which is a fact she first shared when she lead the community-level smoke-free effort. A number of cities in Wisconsin

became smoke-free since passage of Wauwatosa's ordinance. Ten cities have enacted ordinances and several have even strengthened their ordinances. The effort to repeal is disrespectful to those who have spent tens of thousands to comply with the ordinance and is also inconsiderate of the health department's time and effort.

Shirley Smith, 142 N. 86th Street, recounted a friend's delight in Ireland's smoke-free pubs. Dean Smith, 142 N. 86th Street, favored retaining the ordinance and asked why there was a three-year delay written into it.

The Chair said that he made the motion for July 1, 2006 implementation to allow businesses time to get the necessary work done and to enhance the chance that the state would enact a statewide measure. Ald. Birschel recalled that there was a contingency that it would take effect sooner if communities contiguous to Wauwatosa passed a smoke-free ordinance. Ald. Sullivan agreed that the overall reason was to provide the most advance warning to make adjustments along with the possibility of the state legislature taking action. We wanted to take a leadership role by being the first in Milwaukee County, and we will see others follow suit.

Alan Kopischke, 1306 N. 63rd Court, said he served on the Council when this ordinance was passed and was actively involved. The community group spent months doing preliminary work and getting input. There was much debate, discussion, and a number of amendments at the committee level resulting in a very thoughtful and balanced ordinance with more safeguards than exist in other communities. Businesses have been planning on this, and city staff has invested time and funds in getting ready for it. It seems ill advised to pull it out at the last minute considering all the time and work that went into the ordinance.

Janet McMahon, 4144 Menomonee River Parkway, said she has transmitted comments in e-mails and by phone. She said that there are a lot of reasons why surrounding communities have been distracted from acting, but the ordinances they are working on are stronger and more comprehensive than Wauwatosa's.

Donna Wininski, 1728 N. Hi Mount Boulevard, Milwaukee, said that Oshkosh's ordinance has a much higher alcohol cutoff to qualify for exemption. Stevens Point and Wausau offer only a tavern exemption. The governor did not support the recent bill because it pre-empted local ordinances. There are many here tonight who represent other communities that are working on smoke-free ordinances. Although they haven't yet been passed, it is not through lack of activity or motivation or will. Wauwatosa is not an island; it is an oasis.

Michael Warren, 2520 N. 128th Street, Brookfield, spoke in favor of repeal. He said that when the ordinance first came through, it could have closed a lot of businesses. The delay in implementation was an excellent idea.

George Grbisch, 1175 Hawthorne Ridge Drive, Brookfield, said he has been in business for 33 years. He spoke of military veterans who could not drink because they were not yet 21 and said that, similarly, he does not want to tell those customers that they can't smoke. He felt that everyone should be on the same playing field.

Rob Messinger, 2010 W. Mill Road, Milwaukee, of Hectors A Mexican Restaurant, 7118 W. State Street, also favored repeal of the ban. He said that people have the right to make choices; it is up to the business whether to allow or not allow smoking. A bar is not a public building, and no one *has* to go into his restaurant.

Sharon Novak, 3654 S. 84th Street, Milwaukee, representing the Milwaukee Tavern League, felt that a smoke-free ordinance will not pass in Milwaukee and also questioned whether West Allis or Greenfield will act. She also spoke of choices and the fact that no one is forced to patronize a business that allows smoking.

Moved by Ald. Sullivan, seconded by Ald. Birschel to place this matter on file. Ayes: 6; Noes: 1 (Herzog)

## **Development of the 18-Acre Public Works Site South of Walnut Road**

In response to the committee's directives at the previous meeting, Ms. Welch reported the City Attorney has drafted a Memorandum of Understanding (MOU) with Cobalt Partners, and she has amended the draft RFP previously submitted for the committee's review. The three developers still involved at the end of the 2003 process were invited to tonight's meeting. All three indicated they are still interested in the site.

Mr. Kesner said that Cobalt Partners provided the first draft of the MOU in the form of their proposal letter. His draft incorporates the following changes: 1) Added statement under Direct & Ancillary Economic Effect that the proposal from Cobalt will conform to the requirements of the RFP currently being developed and prepared for approval by the Common Council for development of the site; 2) Under City Obligations, incorporated language to allow the city to consider proposals for development or letters of interest that are received prior to execution of the MOU. Mr. Kesner explained that the MOU would be executed following Council approval next week. Cobalt wanted to give their client some certainty of an end date so that they could invest in firming up their proposal.

Ald. Birschel said he has uncovered some exhibits about the public works area that were brought to public meetings, which he displayed. He referred to areas designated by the DNR as containing contaminants that were not to be excavated or disturbed. Letters included in the exhibit contain a recommendation by the Engineering & Operations Administrator and the City Administrator that these strips should be maintained by the city. Ald. Birschel also mentioned resident concerns about ingress and egress being restricted to 113th Street. He reported that he received a phone call from James Strobel, 1571 N. 116th Street, in favor of the Cobalt proposal.

Mr. Kesner said that he did address the concerns about contaminants as far as indemnification is concerned. The purchasers are aware that the site is an old landfill property, which is a matter of public record and public knowledge. The city would not have to retain ownership in order to retain protection from any environmental liabilities. The DNR closure letter would specify methods for developing the area. The issue will be investigated in more detail and potential purchasers will be aware of all conditions.

Ald. Donegan asked if any notification has gone out to any potential developers. Mr. Kesner said there was no specific notice but there is some knowledge in the public through newspaper reports and agendas. Ald. Donegan was concerned about foreclosing other options at this point. He suggested allowing a two-week period for submittal of letters of interest or proposals. Ms. Welch noted that the committee's directive was to pursue the Cobalt proposal as well as revisit previous ones and determine the developers' level of interest. The question now is whether four proposals are enough or does the committee want to open it up to a totally new RFP process.

Ald. Sullivan commented that issuing a new RFP would disadvantage those who previously were being considered and would not be in good faith. He suggested allowing some modification of those previous proposals, if the developers so desire. Aids. Treis and Herzog concurred.

Helmut Toldt of Toldt Development, Inc., indicated that he would be prepared to make a presentation at the next meeting. Jack Shepherd, of Thomson Corporation/The Shepherd Partnership, noted that a lot has happened since these proposals were last considered and requested at least three weeks. Rich Conley of Metropolitan Development concurred that he would like to spend a little more time revisiting his proposal.

There was further discussion and comments from the committee, staff, and developers on the merits of allowing each previous proposal to be "tweaked" and the type of revisions that implies. Ms. Welch noted that there was no guidance or requirements from the city other than on infrastructure when the previous proposals were sought. The

current draft RFP outlines some additional requirements, so it would be appropriate to share that criteria and allow the developers to respond to it if it will be used in reviewing the existing proposals. The committee may want to revisit what was unique about each proposal but should also consider that the market has changed.

Mr. Conley commented that trends and economic conditions have changed. Undoubtedly some changes could be made that will be more current and would make it a better project. Mr. Shepherd noted that questions on issues such as wetlands, final grading, and stormwater requirements were not yet answered. Mr. Toldt felt it would be appropriate to tweak plans considering such things as stormwater issues, but he was concerned that proposals would be completely reworked based on all the comments made three years ago, which would only benefit the others in the competition. Mr. Conley said he has no intention of making significant changes. He may change numbers, square footage, or vary layouts, but the project would have the same character as seen initially.

Ald. Sullivan said he is sympathetic to the concerns but feels that some degree of change should be allowed. He said that the three developers who previously submitted proposals have a place at the table based on their past work. Cobalt Partners has a place because it was their proposal that restarted the process. They came in three years later, however, and the rest of the developers should also have the benefit of considering three years of change in the community.

Ald. Donegan suggested that the committee consider how to establish criteria for considering the proposals. Also, where in the process do we accept public comment, which will certainly affect the criteria. Perhaps the proposals as they now stand should be considered, public comment heard, criteria then established, and then hear final proposals. Ald. Meaux agreed, noting that the committee has not yet answered what it would really like at the site. Hearing the previous proposals might help refine the criteria. Ms. Welch reviewed her earlier suggestions on criteria that might be considered and said it is critical to determine if proposals will be evaluated based on sale value, tax value, proposed use, traffic impact, etc.

Asked about stormwater criteria, Ms. Welch said that different formulas would be used for residential and light industrial usage. The City Engineer has provided some insight into this basin and the type of development that could be accommodated. In terms of peak flow available, the current sewer credits could accommodate two acres of industrial development. This means that, with either residential or industrial use, the concept of “tight sewers” will need to be considered, which involves new sewers that do not allow infiltration of stormwater and don’t contribute to peak flow. Under that concept, the City Engineer felt that 23 acres of development or 893 additional people could be accommodated. How that translates to residential units has to be determined. Regarding traffic volumes, Ms. Welch said that 116th Street is considered to be a connector or minor arterial street and is at roughly 50% of capacity, although that would have to be updated.

Following further discussion of criteria and parameters, Ald. Sullivan proposed using the following criteria to evaluate the impact of each proposal:

1. Specific uses
2. Sale price of land
3. Tax revenue or impact to the tax base
4. Traffic impact, qualities of impact (24 hours, rush hours, personal vehicles, trucks, etc.)
5. Number of new residents, if any
6. Impact of new residents on city services (school age, seniors)
7. Number of new jobs brought into the community
8. Impact on stormwater
9. Height

10. Percentage of lot coverage, percentage of green space
11. Sewer impact
12. Water impact

Mr. Kesner noted that it is important to consider water and sewer separately. Sanitary sewer credits relate to compliance with MMSD regulations. Higher water use would have some impact on our water utility, since they have been impacted by the loss of major industrial customers and need to increase revenue.

Moved by Ald. Sullivan, seconded by Ald. Birschel to look at all four proposals at the July 11 meeting in light of the foregoing 12 criteria –

Mr. Toldt said that he would favor Ald. Donegan's proposal of hearing all four presentations and then taking public comment. He would suggest then getting to a short list of two, realizing that Cobalt Partners would likely be one of the finalists. He noted that all incur continuing expenditures as they move forward.

Ald. Treis commented that his effort to bring development of this site back to committee and his discussions with the Community Development Director on the issue go back to well before the Cobalt proposal came forward.

Mr. Shepherd spoke about goals of increasing the school population and providing a place for "empty nesters" in order to regenerate the city. He felt that revisiting the proposals is more beneficial to the city than to the developers due to changes that have occurred since then. Also, the developers still need answers on the issues of wetlands, grading, and stormwater. He endorsed a presentation in four weeks with those things considered.

Mr. Kesner said that part of the terms of the MOU is to give Cobalt 90 days to formulate details. They might not be ready in four weeks. Ms. Welch said that the current Cobalt proposal is probably comparable to the other three in that it is at a conceptual level; there is not yet a site plan or building elevations. The other developers probably would not want to go to that level without some greater assurance, and the committee may not need the full 90-day version from them in order to make a comparison.

Jim Heffernan of Cobalt Partners noted that citizens are not yet very well represented. He believes that when they have their say they will feel the nature of the Cobalt development is appropriate for this site. It would meet most of the 12 criteria. He said that they do need the full 90 days to bring a level of detail that will make their proposal self-evident.

Ald. Didier commented on the need to be specific about criteria such as the incremental value or tax increase that is desired. Ald. Donegan also questioned how the criteria would be used and whether the committee should set specifics. Perhaps more definite criteria can be established after the three proposals are seen. Mr. Conley commented that the criteria, as stated, give a fairly solid framework from which to work.

Mr. Kesner suggested giving Cobalt Partners 90 days and giving the other three developers some direction when they appear in July so that they can decide whether to proceed and also decide how much detail they want to provide by the end of 90 days.

With consent of the mover and second, Ald. Didier amended the motion to give the three original developers until Thursday, July 6, to submit proposals to the Community Development Director for evaluation at the July 11 meeting based on the foregoing criteria –

Ald. Donegan clarified that he would not want to decide right now just what action would be taken at the July 11 meeting, particularly whether any proposals would be eliminated.

The developers present indicated they could meet the timeline. Mr. Shepard felt that some feedback on neighborhood concerns, particularly traffic, would be helpful. Ald. Birschel again mentioned the desire to restrict ingress and egress to 113th Street.

Vote on the motion as amended, Ayes: 7

Based on the committee's discussion, Mr. Kesner indicated that he will change the final paragraph in the MOU on the city's obligations to reflect the three other proposals.

Moved by Ald. Didier, seconded by Ald. Donegan to recommend to Council execution of the proposed Memorandum of Understanding with Cobalt Partners subject to amendment by the City Attorney. Ayes: 7

The meeting adjourned at 10:45 p.m.

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Carla A. Ledesma, City Clerk  
Wauwatosa, Wisconsin