



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING Tuesday, April 27, 2010

PRESENT: Alds. Birschel, Herzog, Jay, Meaux, Nikceвич, Organ, Pantuso, Wilke

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Attorney; D. Wheaton, Chief Bldg.
PRESENT: Official; J. Archambo, City Admin.

Ald. Herzog as Chair called the meeting to order at 8:07 p.m.

Committee Orientation

Ms. Welch, Community Development Director, presented an overview of the committee's responsibilities relating to review of various types of applications and policies affecting the overall community. She specifically detailed the processes for conditional uses, land divisions, planned developments, zoning changes, and municipal ordinance changes. Review of requests for street festival permits was cited as an example of other agenda items outside the specific purview of her department that are brought to this committee. She emphasized that alderpersons should not hesitate to contact her or other staff for additional information on any issues.

Ordinance – Fence Setback Requirements

Held from the previous meeting, the committee reviewed the proposed amending Section 15.28.020A.1 and creating Section 15.28.030A.4 of the Code to add additional fence setback requirements from permanent structures on adjacent parcels returned to the committee following introduction to Council. The issue of maintaining structures immediately adjacent to fences was raised by former Ald. Stepaniak and has been discussed several times by this committee.

Ald. Birschel proposed the following substitute ordinance language, the result of a discussion with the Chief Building Official: *"If the city directs the owner of a structure to maintain or repair that structure to the standards set by the city building maintenance code and said maintenance or repair cannot be accomplished because a part of the structure is obstructed by a fence, the city shall require the owner of the fence to temporarily remove that portion of the fence causing the obstruction at the fence owner's cost until said maintenance or repair is completed. The fence owner shall then replace that portion of the fence at the fence owner's cost."*

Moved by Ald. Birschel to recommend adoption of the ordinance
with the aforementioned substitute language –

The Chief Building Official would have enforcement authority. Mr. Wheaton reported that penalties could start at \$150 per day up to a maximum of \$1,000 per day with additional re-inspection fees of \$75. He emphasized that property maintenance is a complaint-based program, so the first step would be to establish that there is property maintenance violation on the structure adjoining the fence. The inspector has discretion

on timing of the property maintenance issue; the fence would have to be removed within a specified 30-day period. The inspector would determine the length of fencing to be removed. In answer to a question, Mr. Wheaton estimated that there have been four such issues within the past 20 years that were resolved with the inspector acting as liaison between the property owners.

Mr. Kesner said that although the property owner has the general power to make things right, this is an unwritten policy that an individual putting up a fence would not necessarily know of. Codifying the remedy would provide written notice to the public. Mr. Wheaton agreed that policies and procedures tend to be more challengeable than an ordinance.

Ald. Meaux seconded the motion –

Mr. Kesner clarified that, if challenged, a review in court would determine whether an inspector used discretion appropriately and chose the appropriate remedy. If enacted as an ordinance, the remedy is assumed to be correct and the ability to uphold it is stronger. Appeal would be through the Board of Zoning Appeals.

Called in from another meeting to review the proposed language, Ms. Welch agreed that it would be a reasonable way to handle the situation the few times that it arises.

Upon roll call vote, Ayes: 8

Village BID Sign Code Changes

Mr. Wheaton, Chief Building Official, reviewed proposed changes to the sign code section relating to the Village Business Improvement District (BID). The Village BID requested modification of the rules for use of sandwich board signs in order to better fulfill the needs of business owners. As drafted, the ordinance would allow one sandwich board sign up to 12 square feet per business or per street frontage for corner businesses. The former limitation of 120 days per year of usage has been removed. Only sign styles approved by the Village BID would be permitted. There is a requirement for public liability insurance in an amount not less than \$1 million. Signs must be stored inside when the business is closed, and the city may order removal of a sign that creates a pedestrian or traffic hazard. The annual permit fee will be as outlined in the city's consolidated fee schedule.

Kathy Ehley, Executive Director of the Village BID, said that the 1998 ordinance established an exception to allow sandwich board signs in the Village only. The BID was charged on a per-sign basis with a limit of eight signs. The Village has grown a great deal since that time with more businesses and different needs. Use of the signs has been difficult for the BID to manage. Under the new ordinance, businesses would apply for a permit themselves and be responsible for their own signs.

Russ Drover, 7530 W. State Street, listed concerns about the proposal. He cited difficulties in finding the agenda for tonight's meeting on the new city website and in opening attachments in email agenda transmittals. He objected to decisions being made by one BID person or committee rather than individual property owners and to the requirement for a conforming design. He mentioned freedom of expression and said that more regulations are not necessarily desirable. He asked that the matter be held.

Mr. Kesner said that the \$50 fee amount has been on the city's consolidated fee schedule since 2008. It applies to sandwich boards in city right-of-way in the Village Business Improvement District only. He confirmed that the ordinance would be introduced at the next Council meeting and come back to this committee in two weeks.

Asked by Ald. Organ to compare the current and proposed versions, Mr. Kesner said the current ordinance allows only those signs owned by the BID and leased for a fee to business owners. Businesses would now own the signs themselves. More signs would be allowed, but they would have to meet design standards. The BID currently owns only three signs; others being used in the Village are not in strict compliance with the current ordinance. Ms. Ehley added that current language would allow only eight of the 75 businesses to have signs; they are requesting latitude to have more. She confirmed that BID members would be updated on the proposed change before final Council action is taken.

Mr. Wheaton clarified that the maximum size of the sign is in keeping with other signage. The height would be dictated by the BID's sign standards.

In response to a question of why sandwich board signs are not allowed citywide, Mr. Kesner stated that the findings in the original ordinance were that the Village had a unique historical nature. No other business areas have asked for permission or been reviewed. Businesses outside the Village that are using sandwich board signs are frequently warned that they are not legal. If they were to be permitted outside the village, the ordinance would have to address who would set design standards. There are no other organizations that have the structure to provide that.

Ald. Meaux said that the committee has noted Mr. Drover's concerns, and the ordinance seems to be sensitive to those concerns regarding flexibility for businesses. It will come back to committee for further discussion after introduction to Council.

Moved by Ald. Meaux, seconded by Ald. Jay to recommend to Council introduction of the ordinance. Ayes: 8

Repeal of Local Smoke-Free Restaurants Ordinance, Adoption of Statewide Smoking Ban

City Attorney Kesner that the ordinance before the committee is in two separate parts—repeal of the existing local ordinance and adoption of the state statute enacting a statewide smoking ban. Language has been added to take into account a late amendment by the state legislature, unnumbered at this time, relating to the definition of “outdoors.”

Moved by Ald. Nikcevich, seconded by Ald. Birschel to recommend to Council adoption of the ordinance –

At the direction of the Chair, the committee voted separately on each part of the ordinance.

Vote on repeal of the local ordinance, Ayes: 8
Vote on adoption of the state statute, Ayes: 6, Noes: 2 (Jay, Herzog)

(The committee recessed at 9:12 p.m. and reconvened at 9:24 p.m.)

Rezoning of Portion of N.E. Quadrant of County Grounds to Conservancy District

Before the committee for review was an ordinance rezoning a portion of the northeast quadrant of the Milwaukee County Grounds from Medical Center and Institutions District to Conservancy District. Displaying a map of the northeast quadrant, Ms. Welch pointed out the flood control basin, the forestry education center, and the urban gardens, all zoned Conservancy District. Rezoning the 55 acres now under consideration would help preserve open space and support Milwaukee County Parks Department efforts.

James Keegan, Milwaukee County Parks Department, 9480 Watertown Plank Road, reported that Milwaukee County is in the process of gathering public input on their proposal.

Moved by Ald. Birschel, seconded by Ald. Jay to recommend to Council approval of the rezoning ordinance. Ayes: 8

Land Division in N.E. Quadrant of Milwaukee County Grounds

Ms. Welch distributed copies of the proposed certified survey map (CSM) that will divide a portion of the northeast quadrant into separate parcels, including outlots reserved for butterfly habitat and Hwy. 45 improvements, a parcel for the proposed UW-M Innovation Park, and the proposed Conservancy zoning area. Craig Dillman, Milwaukee County Real Estate Manager, 2711 W. Wells Street, and Bruce Block, Reinhardt, Boerner, Van Duren, 1000 N. Water Street, Milwaukee, representing the UW-M Real Estate Foundation, were present.

Ald. Birschel distributed an amended map he designed to increase the size of outlot #1, the habitat area, and decrease the size of outlot #2, reserved for DOT roadway improvements. The overall configuration would remain the same. Ms. Welch said that Mr. Dillman and Mr. Block should review the amended map to be sure it does not contradict any directive from the County Board or anything else previously agreed upon.

Considerable discussion ensued on the need or advisability of proceeding with the amended map. Ms. Welch noted that the CSM was largely generated by Milwaukee County in their discussions with UW-M representatives. As part of the Business Planned Development and master plan, land uses do not have to be restricted to the specific boundaries on the CSM. She was concerned about creating a situation where we are approving something that the County Board didn't approve. She would like to see the boundary and parcel outlines in agreement.

Mr. Block said that the amendment does create some complications under the county agreement. When DOT work affecting outlot #2 is finished, the CSM could be amended to allow for expansion to the east, which the Foundation supports. Mr. Dillman commented that his concern is assuring that land designated as additional conservancy now is not going to disturb what the DOT needs. The County Board set aside outlot #2 within the transaction for DOT to acquire what they believe is needed for future right-of-way.

Glen Boltman, 2542 N. 54th Street, Milwaukee, a Milwaukee County Board employee, said that the DOT has authority to use that 17 acres irrespective of how it is drawn here, which is basically the line that DOT provided. It was understood that the line would be adjusted after final plans were drawn.

Ms. Welch noted that we are rezoning the entire site as Business Planned Development, which remains the same regardless of how we define the outlots. The internal boundaries are not relevant to the overall zoning; we are not changing the external boundaries.

Ald. Birschel withdrew the amended map.

Moved by Ald. Birschel, seconded by Ald. Pantuso to recommend to Council approval of the land division by CSM as presented –

Mr. Block said that if the map is passed as drawn, they would submit an exhibit to their application showing a shaded future conservancy area, which would be the control for rezoning purposes. Any changes to the CSM have no bearing on use of the property. He would also make a notation regarding a future bioswale and underground utilities.

Vote on the motion, Ayes: 8

Rezoning of Portion of N.E. Quadrant of Milwaukee County Grounds to Business Planned Development District

The committee reviewed the proposed rezoning of a portion of the northeast quadrant of the Milwaukee County Grounds at the northeast corner of Hwy. 45 and Watertown Plank Road from Medical Center and Institutions District and Research Park Development District to Business Planned Development.

Bruce Block, Reinhardt, Boerner, Van Duren, 1000 N. Water Street, Milwaukee, representing the UW-M Real Estate Foundation, reported that the UW-M representatives listened to the comments at the April 20 public hearing and reviewed the six preservation points presented by Barb Agnew, Chair of Friends of the Monarch Trail. He indicated that:

- They will submit materials to reconcile all elements of the application.
- The DOT parcel will be zoned Conservancy and any remainder parcels would have to go back through the process to amend the plan.
- They are in the process of completing a traffic study that will be made available to the city very soon.
- UWM is working on a program for implementation of the habitat plan. Restrictive covenants will be imposed, and there will be a master association for the campus that will make annual assessments for maintenance of common areas, which will also include program management for the habitat area. Representatives of UWM, the Milwaukee Public Museum, and the Monarch Trail group will be working cooperatively.
- They will include a diagram or map that shows that the eastern portion of outlot #1 will extend east to the boundary of the right-of-way of the north-south road.
- They will include bioswale improvements or underground utilities
- They would like to retain the 0.46 FAR (floor area ratio) density consistent with the plan adopted for the northeast quadrant. The conceptual plan presented a year ago was not a specific request for density or level of development.

Ald. Meaux noted that the six preservation points request omitting some text under 2.2 Site Attributes (“*It is expected that a long term habitat for the butterflies will be incorporated into the public county park to the east and that the butterflies will transition their route to this resource.*”). Mr. Black indicated that they would not oppose that change.

For the committee’s information, the Chair passed around a packet of correspondence and emails received since the public hearing on April 20.

Ald. Organ requested a summary of the need for this rezoning and of how the proposed development is different from others on the county grounds. Ms. Welch said that this is essentially the only location on the northeast quadrant where there will be a true campus with a series of buildings in different uses. The only other buildings in the northeast quadrant are the power plant, the Ronald McDonald House, a clinic, and in the future a few small structures anticipated for the forestry education center and for picnic shelter use. Current Medical Center and Institutions zoning allows a very dense type of development such as seen with the medical center in the southeast quadrant. It allows high rise buildings while Business Planned Development allows different heights at different locations. The existing zoning would not allow for innovative storm water solutions or the ability to dictate habitat and control materials.

Asked about impact on the tax base, Ms. Welch said that from the community development perspective, it would add value and amenities and has the potential to generate jobs through the research institutions. All of the property is currently owned by Milwaukee County and is non-taxable.

Moved by Ald. Jay, seconded by Ald. Meaux to recommend to Council approval of the rezoning as proposed. Ayes: 8

Preliminary Planned Development – UW-M Innovation Park

Ms. Welch, Community Development Director, reported that the preliminary plan for the UW-M Innovation Park planned development details how development may occur on the site and the parameters that will guide the development as it moves forward. The proposed campus would to be developed over time; at this point its final appearance is unknown.

Lora Strigens, HGA Architects, 333 E. Erie Street, Milwaukee, presented a PowerPoint overview. The plan envisions partnerships with the Regional Medical Center and private partners as appropriate. Guidelines used throughout the planning process included the agreement between Milwaukee County and the UW-M Real Estate Foundation, the Habitat Restoration plan dated December 2009, and the 2004 Milwaukee County Grounds Master Plan and Design Guidelines developed by Kubala-Washatko.

Ms. Strigens outlined the parcels making up the 87.8 acres of the site. Reflecting plans to extend the conservancy area to the east, no building footprints are shown in that area. Development is clustered toward Watertown Plank Road, and the residential area with market-rate housing would be at the north end. New residential development would need to meet standards of what is allowable adjacent to historical buildings and could not exceed the height of those buildings. There are two major storm water management areas and primary bio-infiltration zones. There are plans for shared, structured parking areas buried into the site as much as possible. Some parking will be below grade with green space above. Surface parking would be used in the first phase until demand increases.

A primary difference between the Innovation Park Master Plan and the 2004 Plan is that the earlier plan showed extensive development in what is now identified as primary habitat area. An earlier iteration of the parcels included a “placeholder” outlot. Other than a corner where a parking area overlaps, that area will be used for plantings, storm water, and the primary roadway. The parcel boundary changed from that shown in the Kubala-Washatko plan due to changes to the DOT right-of-way outlot. The 2004 plan’s FAR or floor area ratio (the ratio of total acreage to total square footage) of 0.46 was duplicated to achieve equal development density in the current proposal.

Phase One development would be an accelerator building north of the parks building and the first research buildings west of the parks building. It is hoped that residential development would occur in the early phase as well as the development of the primary roadway.

Bruce Block, Reinhardt, Boerner, Van Duren, 1000 N. Water Street, Milwaukee, representing the UW-M Real Estate Foundation, responded to questions about the Eschweiler buildings. He said that the Foundation hopes to sell that parcel fairly soon and hopes that phase one development will begin there as early as 2011. Stabilization and adaptive reuse efforts will begin as soon as the property is sold. He and Ms. Strigens emphasized that the building footprints shown around the Eschweiler buildings, which Ald. Organ found to be fairly large, are purely conceptual. It is the residential developer who would propose the ultimate layout. Mr. Block said that the maximum of 200,000 square feet allocated to this area includes the existing Eschweiler and parks administration buildings.

Ms. Welch and Mr. Kesner explained that this committee can place any parameters on residential development that are deemed necessary. When the property is sold for active development and a proposal comes forward, this committee will review amendments to the footprints. The conceptual plan approved here will require specific approvals for each phase. The committee has the opportunity to change the 200,000 sq. ft. parameter now if that is thought to be excessive. Plan Commission, Design Review Board, and building permit approvals will be needed, and any direct changes to the Eschweiler buildings would be reviewed by the Historical Preservation Commission. Approval of the preliminary plan provides the parameters for the final plan. No new conditions can be set when reviewing the final plan.

Mr. Block explained that the 200,000 sq. ft. figure was the result of discussions with a number of high quality developers interested in the site who were asked what they felt would be marketable and responsible. The cost of restoring the historic buildings is not insignificant, and they felt they needed a density of 175-225 units to undertake that expense and still have a return on investment.

Asked about options, Ms. Welch said that if the footprint is limited too much, there is a possibility that nothing will happen and there will be no way to renovate the Eschweiler buildings. The committee could decide to see what a developer is proposing and determine the circumstances under which it would come back here for review. Configurations will depend on what the development community says is needed to make it a feasible project.

Ms. Strigens reported that the existing buildings in the residential development area total 78,600 square feet, which includes 21,000 for the parks administration building and about 57,000 for all five Eschweiler buildings.

The Chair urged caution in arbitrarily coming up with a new square footage limit.

In response to additional questions, Mr. Block said that the residential development and Innovation Park areas are separate activities; they are precluded from putting any residential on the south end according to their agreement with county. He suggested consideration of higher residential buildings; maybe one tucked in the corner could exceed the height of the Eschweilers if it worked aesthetically. That would transfer some density into one footprint.

Ald. Jay commented that with the Eschweilers at about 11,000 sq. ft. per building, the seven additional buildings shown on the conceptual drawing each could have approximately 21,000 sq. ft. She supported the idea of creating a smaller footprint by allowing the buildings to be one story taller than the Eschweilers. Mr. Block clarified later that the height restriction was self imposed.

Ms. Welch felt that there are places where a higher building would have less impact because of the terrain. That could be determined when a specific development plan is presented. In the preliminary plan, the committee members should determine if they are comfortable with 200,000 square feet as a maximum knowing that the developer would present plans for a specific type of housing and the committee could evaluate whether it will fit on the site. The committee can recommend parameters and say what is acceptable.

Moved by Ald. Nikcevich, seconded by Ald. Birschel to recommend to Council approval of the preliminary plan including parameters of: a maximum of 200,000 square feet for the residential area, including existing buildings, with the option to exceed the height of the Eschweiler buildings with Common Council approval; land may be cleared only as it is being used; development is to stay within the Kubala-Washatko plan parameters of 0.46 floor area ratio density throughout the development; the eastern boundary of the habitat area will be extended to the east; unused DOT land will be conserved for non-development; a master association supporting the habitat will be established; a formal traffic study will be

provided; and the portion of Section 2.2 of the UWM Innovation Park Plan, Site Attributes, cited in the “6 Preservation Points” will be removed --

Ald. Organ indicated that she still is not comfortable with the 200,000 sq. ft. maximum. She noted that there is nothing to back up that number other than other than informal discussions of what number would be appropriate. Mr. Kesner noted that limitations could be placed on the footprint and/or height of buildings and the committee could require that a developer justify the amount of square footage proposed by providing a market study.

The mover and second accepted an amendment by Ald. Organ to limit square footage of residential development to the amount justified by the parameters but in no case to exceed 200,000 square feet, and to require a study of what fits in with the historical significance of the Eschweiler buildings.

Ald. Jay was concerned about heavy equipment that could damage plant root systems and asked about including a requirement for more than just a construction fence to protect those areas. Ms. Welch said that before anything can be built, erosion control and building permits will be required, which will take into consideration the boundaries for the habitat area including existing trees and their root lines. Mr. Kesner added that this is more of a regulatory issue that can be handled at staff level. If it is stated that there will be no construction activity in a certain zone, the final plan would have to demonstrate how they will assure that doesn't happen.

Ms. Welch said that additional caveats that are always added to preliminary approvals include final approval by the water superintendent and city engineer.

Vote on the motion as amended, Ayes: 8

The meeting adjourned at 11:10 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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