



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING Tuesday, February 10, 2008

PRESENT: Alds. Birschel, Herzog, McBride, Meaux, Nikceovich, Stepaniak -6

EXCUSED: Ald. Hanson

ALSO A. Kesner, City Atty.; N. Welch, Community Dev. Dir.; Chief D. Redman, Asst. Chief
PRESENT: J. Hevey, Fire Dept.; J. Archambo, City Admin.; Alds. Krol, Donegan

Ald. Herzog as Chair called the meeting to order at 8:20 p.m.

Ordinance – Mandating of Employee Benefits for Private Businesses

The committee reviewed the proposed ordinance, introduced at the previous meeting, to create Chapter 6.06 of the municipal code relating to mandating of employee benefits for private businesses. City Attorney Kesner explained that it is a pro-active effort designed to prevent a direct legislation petition on this topic from proceeding forward. It is modeled on an ordinance adopted by West Allis and a number of other communities.

(Ald. Meaux excused. -5)

Moved by Ald. Stepaniak, seconded by Ald. Birschel to recommend to
Council adoption of the ordinance. Ayes: 5

Ordinance – Signage in Medical Center and Institutions District

The committee reviewed an ordinance, introduced at the previous meeting, repealing and recreating Section 15.14.200 of the municipal code to allow additional signage on buildings in the Medical Center and Institutions District.

(Ald. Meaux present. -6)

Mr. Kesner reported that this allows larger signs on buildings, primarily to help with wayfinding. William Hatcher, Executive Director of the Milwaukee Regional Medical Center, thanked staff for their work on these changes, which he felt will be very beneficial to the medical center.

Moved by Ald. McBride, seconded by Ald. Stepaniak to recommend to
Council adoption of the ordinance. Ayes: 6

Business Planned Development, Rezoning – 1234 N. 62nd Street

The committee reviewed a request by Ryan Schultz, HSI Properties LLC, for preliminary approval of a Business Planned Development and Change of Zoning in the AA Light Manufacturing District at 1234 N. 62nd Street for 148 residential apartment units. Ms. Welch, Community Development Director, reported that the applicant would like to construct a four-story building on the former Derse site at N. 62nd Street and

Martin Drive. There was substantial public input at the Plan Commission meeting, and the developer also held a neighborhood meeting. The process now requires scheduling a public hearing on the rezoning, providing another opportunity for public input. Committee review and discussion follows thereafter at which time all of the conditions for preliminary approval of the planned development are identified. The developer would come back through the Plan Commission, this committee, and the Common Council when final plans are submitted.

Ryan Schultz, HIS Properties LLC, 500 W. Silver Spring Drive #K235, Glendale, reported that he has received much feedback from the adjacent neighborhood, more than half of which was positive.

Gary Kandziora, 6124 W. Martin Drive, was concerned about having enough time in the process to address questions and concerns, including traffic and environmental issues.

Moved by Ald. Birschel, seconded by Ald. McBride to recommend to Council introduction of a rezoning ordinance and adoption of a resolution setting a public hearing date. Ayes: 6

Disposition of Underwood Avenue Properties in Anticipation of Fire Station Construction

Continuing discussion from the previous meeting, Ms. Welch emphasized that the primary concern of staff regarding the fire station is coming up with a plan for existing houses so that the site can be prepared and construction proceed on schedule. The goal is a cleared site ready for construction, which can be achieved through demolition, deconstruction/salvage, or moving the structures off site if feasible. In the past, the City has sought bids on these types of processes.

Mark Rider, 2566 N. 65th Street, presented a petition bearing 11 signatures in support of moving homes from Underwood Avenue to 2220 Wauwatosa Avenue. He indicated, however, that he has abandoned that relocation site in favor of other alternatives. He referred to an updated offer involving a site on the north side of North Avenue between 100th Street and Met to Wee Lane, which is outlined in his memo dated February 6, 2009, copies of which had previously been provided to the committee.

Mr. Rider proceeded with a PowerPoint presentation beginning with photos of the homes at 1531 Underwood Avenue and 1613-15 Underwood Avenue, describing their features and how they would fit on the North Avenue site. He stated that there is still time to follow the necessary process for a land division and Design Review Board approval; rezoning would not be needed. In respect to the \$250,000 and \$100,000 bonds that would be required, he indicated that he has been denied by two carriers.

Returning to the Wauwatosa Avenue site, Mr. Rider indicated it is still a possibility but is complicated by the tree removal question. He later stated that it would not be possible if trees have to be removed. He displayed a new Wauwatosa Avenue site plan and explained how it addresses issues raised at the previous meeting.

Mr. Rider displayed a site plan showing one possible layout for the single family home and townhouse duplex on the North Avenue site. He reported that he has spoken to Milwaukee County about the Menomonee River Parkway route that would be used for the move and has negotiated with the owner of the land. An additional possible site is currently for sale that would also require use of the parkway, North Avenue, Mayfair Road, and another major city street. Another property at 6502 W. North Avenue is economically attractive and would be usable contingent upon zoning issues.

Mr. Rider next displayed pictures showing how his contractor performs house moves. He also described his familiarity with construction and salvage techniques and displayed some of the improvements he made to his own residence. He estimated the savings and taxes to the City in approving his proposal. Whole-house salvage was described as a possibility also. Mr. Rider later presented a letter in support of his proposal from Gwen Shadley, 336 N. 68th Street, whose home was moved from the Hart Park area.

Peter Boesen, 7512 W. Garfield Avenue, spoke in opposition to relocation of homes and subdivision of land at 2220 Wauwatosa Avenue. He submitted petitions in opposition bearing signatures representing 21 households. He spoke of the effect on the character and ambience of the Wauwatosa Avenue neighborhood and said that the Underwood Avenue homes have been deemed expendable for the greater good of the community. He urged the committee to give the proposal careful consideration.

Charles Opferman, 1702 N. 72nd Street, also speaking in opposition to the Wauwatosa Avenue proposal, referenced and quoted land use statements in support of his position from the City's newly adopted Comprehensive Plan. He noted that Mr. Rider has acknowledged that he does not have control of the sites, and he concluded that he has no basis for requesting redevelopment or changes in the properties. Richard Janisch, 2223 Wauwatosa Avenue, noted that time is of the essence and it would be impossible to accomplish all that is needed by the end of March. Mike Lemberg, 7433 Watson Avenue, related past contact with Mr. Rider regarding purchase of his side yard and said he feels strongly that this is wrong. Mark Middlestadt, 2145 Wauwatosa Avenue, supported Mr. Boesen's statements. Sally McDonald, 7442 Watson Avenue, and Dale Alberta, 2242 Wauwatosa Avenue, also spoke in opposition.

John Mayer, 2234 Wauwatosa Avenue, cited the city's Tree City USA status, described old photos of the original Wauwatosa Avenue homes, and spoke of the difficult housing market and the adverse impact on his property and the neighborhood. He provided information obtained from the Internet about the proposed house moving contractor and a move that began in 1999 and was completed three years later.

Mr. Janisch added that Wauwatosa Avenue is a designated historic district, but Ms. Welch explained that it had been designated as a local historic district by the former Landmarks Commission. It has been identified as historic but has not been redesignated by the Historic Preservation Commission.

Mr. Rider clarified his ability to finance the project and said that he has partnerships with property owners in the works. He explained techniques that would allow the moves to be handled very quickly.

Ald. Birschel reported on his recent contact with the North Avenue property owner, who he described as very lukewarm on selling the property and reluctant to be associated with the project.

Ald. McBride said he admires Mr. Rider's creativity and passion but noted the lack of a bond and ownership of neither the houses nor a relocation site and cited the need to proceed with fire station construction. He also spoke of efforts to preserve the historic nature of Wauwatosa Avenue and asked area residents to work toward and support historic redesignation.

Moved by Ald. McBride, seconded by Ald. Meaux to deny the request to move one or more houses to 2220 Wauwatosa Avenue –

Mr. Kesner stated that, procedurally, it would be appropriate to place the request on file.

With consent of the second, Ald. McBride amended the motion by moving to recommend placing the request on file –

Ald. Stepaniak commented that he had moved at the previous meeting to hold this item to allow Mr. Rider to be heard out and to hear from area residents. The committee has now heard from residents and has learned, among other things, that there is no willing seller and that the bonding requirement apparently cannot be met.

Vote on the motion, Ayes: 6

Mr. Kesner explained that issuing an RFP would go through the Board of Public Works and would not require Council action. Ald. Stepaniak said that finding a way that allows for salvage of the homes seems to be the best course. Ms. Welch said that deconstruction, which is what staff supports, not only salvages materials from the homes but also often helps contain costs when included in the construction bid. Ald. Krol recommended including in the specifications a mandate for recycling that prevents that building refuse from being landfilled, which he learned of today in a presentation by Wastecap Wisconsin. He will provide contact information.

Moved by Ald. Birschel, seconded by Ald. Nikcevich to recommend to Council placing the general question of moving the homes on file.

Ayes: 6

Lease Agreement for Outdoor Seating Adjacent to 7707 Harwood Avenue

City Attorney Kesner reported on revisions made to a lease agreement with Diablos Rojos, Inc. for outdoor dining space on City right-of-way adjacent to the planned Café Hollander at 7707 Harwood Avenue, including the Harwood Avenue pedestrian bridge. The lease was initially reviewed by the Board of Public Works and forwarded to the Common Council where some changes were suggested. Revisions address rental calculations, installation and maintenance of public improvements and art, and consequential damages. Monthly rent has been broken down to a per-square-foot rate of \$0.32 per month, and the tenant has agreed to a 2% annual increase. The tenant will be responsible for the cost of removing existing public art. Pursuant to the Federal Visual Artists Rights Act of 1990, reinstallation is subject to approval of the artist, with whom a meeting has been scheduled. The lease agreement could move forward with appropriate contingencies.

Eugene Nickel, 555 Robertson Street, referred to phone calls and a letter to the Council raising concerns about leasing the bridge. He cited the area's proximity to Hart Park, the bike path, the Little Red Store, and two elementary schools and said he is opposed to outdoor drinking on a public bridge that restricts public use. Mr. Nickel added that it is a huge jump to go from leasing space to a small popcorn wagon to taking up a huge area and restricting activity and movement.

Joe DeRosa, The Chancery, 7606-13-15 W. State Street, said he is not concerned about the proposed operators but about the next ones. He said that long-term leases typically do not work well and felt that the 30-day-out *with* cause should be changed to a 30-day-out or longer *without* cause. He was concerned about the cost of maintaining or removing the fountain should it ever revert to the City. He questioned the lack of personal guarantees in a lease with a corporation rather than individuals, noting Brookfield's use of a letter of credit that must be maintained annually or the possibility of a performance bond. He advocated tying rent increases to the CPI (Consumer Price Index) and more clearly defining the outdoor period rather than allowing some non-seasonal use on a day-to-day basis. He noted that the Popcorn Wagon's current lease comes to \$0.96 per square foot and questioned the difference, and he asked if the rent would cover additional wear and tear. He presented a photo taken at the Café Hollander in Milwaukee showing the fountain there covered by a blue tarp.

Richard Janisch, 2223 Wauwatosa Avenue, commented that the lease is a good thing for the Village.

Eric Wagner, 2205 N. Lake Drive, Milwaukee, representing Diablos Rojos, indicated that he is comfortable with the current draft. He noted that the Café Hollander proposal was unanimously approved by the Plan Commission, Community Development Committee, and Common Council. He commented that to take the risk of investing \$1 million and have a termination clause without cause would definitely be a deal breaker. A statement making them liable for any fountain removal costs would be acceptable, as would tying rent increases to the CPI. He could agree to a date for removing outdoor furniture but would like the flexibility to put out tables and chairs when weather allows. In terms of the rental rate compared to the Popcorn Wagon rate, he pointed out that they are funding significant improvements at the site. They have always planned to treat the artwork with due respect and will work with the artist to arrive at a solution that works for all.

Ald. Krol noted that the City will have the option to cancel the lease if there is due cause. His major concern is the eight feet of public access across the bridge. If that cannot be increased to 10 feet, he would like to see some restrictions on the amount of occupied space during HartFest and Tosafest. He is also concerned with furniture left outside becoming unsightly when not in use.

In answer to questions from the committee, Mr. Kesner said that the lease could not be assigned without written consent of the City by means of Common Council approval. The City has not used a letter of credit but relies on its power to charge for maintenance-type services and place the charge on the tax roll if necessary. On issue of tying rent increases to the CPI, he will research the appropriate index to use. He explained that this is the first time that the cost of using public right-of-way is being computed on a square-foot basis. Efforts will be made to adjust the Popcorn Wagon lease to make it more consistent with that standard. The question of an unsightly covering on the fountain such as a tarp would be a property maintenance issue. He will write in a requirement for some type of decorative, more permanent off-season cover.

Mr. Kesner said that if the corporation were to default on its obligations, the lease is in default and would be terminated. If an agreement cannot be reached on moving the art or otherwise satisfying the tenant, he could choose not to move forward. The City did not contribute to the cost of the art; it was a cooperative effort involving contributions by Zimmerman Design owners and the Village Business Improvement District. Ms. Welch reiterated plans to discuss the situation with the artist and determine if there is an appropriate place to relocate the art. One suggestion was to place it in the area of the new Rotary performance stage in Hart Park, which is an area that would be viewed by many and where the art would be treated with the respect it deserves. Plan B would be finding a way to integrate it at the current site.

Mr. Wagner explained that the fountain at Café Hollander in Milwaukee was covered for the first time this winter because the building owner was storing piles of snow against it. That is not what would be done here; they are open to suggestions. At Trocadero, they let the fountain freeze over, creating an ice sculpture. Furniture will be stored against the building during the outdoor season and then moved off site. Mr. Wagner suggested November 1 as the end date for outdoor furniture, since there are often warmer days in October. He would be reluctant to remove outdoor seating during the busiest times of the year when festivals such as HartFest or Tosafest are held.

Moved by Ald. Meaux, seconded by Ald. Nikcevich to recommend to Council approval of the lease with added provisions of tying annual increases to the greater of 2% or the CPI; removal of the fountain at the end of the lease if requested by the City; an appropriate off-season cover for the fountain; allowing outdoor use through November 1 with additional days as appropriate; and with the understanding that full outdoor use will be allowed during HartFest and Tosafest in 2009 but a change may be made thereafter if deemed necessary. Ayes: 6

Conditional Use – 7206 W. State Street

Ms. Welch outlined a request by Christopher Leffler for a Conditional Use in the AA Business District at 7206 W. State Street for an extension of Leaf's Lucky Town and an outdoor patio. Mr. Leffler purchased the vacant gas station east of Leaf's Lucky Town with a long-range plan of bringing the two properties into common ownership and combining them. As shown on site photos and drawings that were distributed, existing gas station driveways would be closed, concrete removed, and a rain garden installed. Tanks have been removed and there are no reports identifying contamination on the site. A fire and building code issue still to be resolved involves doors separating the two buildings. The applicant has indicated that there would be no

outdoor music and that lighting would be subdued. The Plan Commission recommended hours for outdoor seating extending to 12:30 a.m.

Mike Szohr, 1744 N. 74th Street, representing Leff's Lucky Town, spoke of the business's involvement in local activities and said they would like to continue to improve and grow by converting a dilapidated gas station into an extension of the bar and adding a small patio for outdoor seating. They are also proposing green space with trees, bushes, permeable pavement, bricks, and a rain garden. Their architect has done extensive research and they believe all of the code issues can be addressed.

Kathy Ehley, Executive Director of the Village Business Improvement District (BID), said that the BID board supports this proposal, as stated in a letter provided to the committee. Bringing green space and the vibrancy of outdoor seating would be a real addition to the entire Village area.

Jim Campbell, 1360 N. 72nd Street, said that a 50-seat beer garden with late hours is not in the community's best interest. The proposal doubles the square footage of the bar and adds a beer garden that is bigger than others in the area and encroaches on a residential street. Its use should be restricted to 9 p.m., the same as Hector's to the east. Mr. Campbell was very concerned about noise and questioned the amount of insulation on the glass, walls, and the possibility of open garage doors. He also outlined parking concerns and past experience with public urination, especially in summer, and issues with litter and vandalism. He mentioned two armed robberies in the area last year and feared that more people equals more problems. Mr. Campbell said that he is not totally against the project but felt more time is needed for answers to questions.

Adam Glawe, 1841 Underwood Avenue, and Robert Westfall, 6171 Washington Circle/6526 River Parkway, supported the proposal. Mr. Glawe commented that, as a realtor, one of his biggest demands is for homes around the Village area. Mr. Westfall said that the night life on State Street draws young families to the area. The Village area is an opportunity to set Wauwatosa apart from other communities.

Ald. Birschel sympathized with the neighbors and recalled past issues with noise that a former alderman had raised over the years. He said that he likes the proposal but feels the outdoor patio should close at 11 p.m.

Moved by Ald. Birschel, seconded by Ald. McBride to recommend to Council approval of the Conditional Use with hours of the outdoor patio extending to 11 p.m. Monday through Sunday –

Ald. McBride, who represents this area, felt this would be a tremendous visual improvement that upgrades a blighted property and knits parts of the Village together. He agreed with somewhat more of a restriction on outdoor seating and indicated that he would work with the neighbors and the applicant on the issues that were raised. He commented that with more "eyes on the street" there might actually be less crime.

There was further discussion of the closing time for outdoor seating here and at other State Street and North Avenue establishments, the possibility of the new space being smoke-free, and the parking issue. Ms. Welch explained that the smoking ordinance does not apply to bars, although Mr. Szohr indicated that they are considering keeping the newer portion smoke-free. Ms. Welch explained that the earlier closing for Hector's was instituted at a time when outdoor patios were a rather new concept in the city and the approach was very cautious. Juniper 61 with an 11 p.m. closing is an exception to earlier closing hours in place on North Avenue. Ms. Welch noted that North Avenue and Village businesses rely on street parking. Some street spaces will be added here through elimination of driveways.

Ald. Stepaniak questioned the situation with two different entities owning the properties. Ms. Welch explained that the Conditional Use essentially deals with this as a stand-alone site. The question of joining the buildings needs to be addressed by the building and fire codes, which the applicant is looking into. Approval of the Conditional Use does not approve the specific plan, which has to go through the Design Review Board.

Greg Prassen of Zimmerman Design, 7707 Harwood Avenue, commented on the code compliance issue and expressed confidence that state and city approvals can be achieved.

Ald. Stepaniak supported the project in terms of the improved visual impact and long term objectives of the City but felt that more time is needed to allow the owner and developer to interact with the neighbors on the question of parking and to address the building code issue.

Roll call vote on the motion, Ayes: 3; Noes: 3 (McBride, Nikceovich, Stepaniak)

Moved by Ald. Stepaniak, seconded by Ald. McBride to hold to the next meeting and seek input from neighbors and find answers and alternatives relative to parking and building code issues.

Roll call vote, Ayes: 4; Noes: 2 (Birschel, Herzog)

The meeting adjourned at 10:59 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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