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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, January 14, 2003

PRESENT: Alds. Becker, Ecks, Heins, Herzog, Kopischke, Krol, Sullivan, Treis -8

ALSO
PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.

Ald. Heins in the Chair called the meeting to order at 8 p.m.

Land Division at 7014 W. Hillcrest Drive

The committee reviewed a request by Jerrold and Verna Fix for a land division in the AA Single Family Residence District at 7014 W. Hillcrest Drive to transfer 178.7 sq. ft. of land from the adjacent property at 7020 W. Hillcrest Drive. Ms. Welch reported that the City would not ordinarily approve this request since it makes the property at 7020 W. Hillcrest Drive nonconforming. The applicants, however, have a court order requiring the land division to proceed.

Moved by Ald. Herzog, seconded by Ald. Kopischke to recommend approval –

Ms. Welch pointed out the land in question on a map of the area. The driveway at 7014 W. Hillcrest Drive crosses the lot line of the 7020 property. There is no other way to create a driveway. The court order was issued under the concept of adverse possession, Mr. Kesner explained, based on possession and use of the land over a period of years without objection.

Vote on the motion, Ayes: 8

Operation of Grede Foundry, 6432 W. State Street

City Attorney Kesner reported that over a period of time Gary Kandziora has raised various concerns about the operation of Grede Foundry, 6432 W. State Street. He has read City ordinances very thoroughly and has concerns about Grede's continued operation as a Conditional Use. Mr. Kandziora summarized his concerns in a September 2002 letter to the Common Council that was referred to the City Attorney and Director of Community Development. Mr. Kesner felt this would be a good opportunity for this committee to hear some of his concerns and determine if any action is indicated.

Mr. Kandziora, 6124 W. Martin Drive, said that soon after moving into his home almost five years ago they found that windows cannot be left open when the wind blows in their direction, and they have to use air conditioning when temperatures are still in the 60s because the house gets stuffy from lack of air. In the winter with the heating system drawing air from the outside into the house, they get pollution, odors, and dust in the house. Dust particulates seem to disburse in a wider range than odors, he noted, and they often have headaches and feel sick after being outside even when they can't see the dust. It is visible at night with a spotlight.

Mr. Kandziora detailed information he has gathered about the foundry's emissions and about Wisconsin Department of Natural Resources (DNR) inspections and emission requirements. He noted that the foundry itself provides the information that the DNR forwards to the EPA for determination of how much pollution they are producing. Grede has different foundries across the country and one in Mexico, Mr. Kandziora said, suggesting that information could be shuffled and applied to other sites.

The pollution from the foundry occurs in a river valley area adjacent to a bluff and surrounded by population, a location where the DNR would never allow construction of a foundry today. We know far more about health effects now, Mr. Kandziora commented. He felt that it can't be said they were grandfathered because what they do isn't grandfathered. He reported that he has gone to the city, county, state DNR, senators, congressmen, EPA and all the way to a senate committee that oversees the EPA. It is really up to the City to do something because everyone else has failed, he said.

Mr. Kandziora explained that the DNR does yearly inspections and writes up annual inspection reports. They are supposed to look at all the machinery that can cause pollution. He found, however, that the DNR engineer wasn't even aware of a bag house on the premises and hadn't included it on inspection reports. When he discovered it the evening of a meeting with Mr. Kandziora, everything around the bag house was red with dust. Mr. Kandziora said that he has tried to alert the proper authorities but has encountered one fire wall after another. It doesn't matter that Grede has been there a long time, he said; they are a non-conforming business and got the distinction of being a Conditional Use when present-day zoning started in 1972.

Mr. Kesner clarified that under our code Grede Foundry is a Conditional Use as an iron and steel foundry in the AA Light Manufacturing District. In a district where a use is classified as conditional and existed prior to the zoning ordinance, it is considered to be a *conforming* Conditional Use. Asked by Mr. Kandziora about the uses listed in the ordinance, Mr. Kesner said that the list was drawn from knowledge in the planning field as to what is appropriate in different districts. Ms. Welch added that the City would also look at what other cities have included in this type of district.

Mr. Kandziora said that the uses not allowed in AA Light Manufacturing and AA Manufacturing districts are those with a large amount of dust, noise, pollution, as well as anything involving coal tar, wood tar, and rubber. He has found that the foundry uses a type of resin sand that is a coal or wood tar product. There is a large list of pollutants coming from Grede Foundry which the DNR has said are VOCs (volatile organic compounds). Mr. Kenziora detailed his research of DNR records regarding these substances, which he said are cancer causing agents. He found that as the foundry produced more VOCs over the years and the DNR found that, statewide, foundries couldn't comply with the limits imposed, those limits were raised. The 2001 yearly inspection report shows that VOCs are still in question and the DNR really doesn't know how much Grede is producing.

Referring to 1994 and 1977 aerial photos, Mr. Kandziora pointed out elements on the 1994 photo that apparently did not exist in 1977, including a building. A Conditional Use permit is necessary when making structural changes, alterations, or enlargements to a building, he said, but they only have Conditional Uses for outdoor lighting and for a storage shed. He also pointed out an area where accumulated foundry sand can be seen on a roof. As indicated by DNR records, they have had this problem at different times with accumulations of three inches to two feet of sand. Mr. Kandziora related his actions when he saw a plume of sand blowing out the top of the roof one night and when he filmed a plume one Sunday morning.

Asked by Ald. Becker to state his goal in speaking to the committee, Mr. Kandziora indicated that he would like this committee to look into the Conditional Use that Grede Foundry has. He noted that the DNR has a stack of complaints for the period from 1988 to 2001 and also has petitions from residents through the years.

Bill Busacker, 6118 W. Martin Drive, said he lives next door to Mr. Kenndziora and takes exception to almost everything he says because a great deal of the pollution in the neighborhood, especially in the summertime, comes from the welding Mr. Kandziora does in his own shop. He said that Mr. Kandziora has posted signs indicating his distaste for the entire neighborhood, where Mr. Busacker has lived for 30 years. He was also concerned about "huge

rusty things" on Mr. Kandziora's lawn that he calls art, which he has complained to the City Attorney's office about. When told that the City couldn't do anything about it, Mr. Busacker reported, he spent almost $2,000 to erect a fence.

Lawrence Quinn, a tenant at 6120 W. Martin Drive for over 20 years who retired from the foundry after almost 30 years there, said he never had problems until Mr. Kandziora he moved in. Mr. Quinn complained of signs that degrade foundry workers and accidents and noise in connection with cars that stop to take pictures of the objects in his front yard.

Mr. Kesner advised the committee that Grede Foundry is a conforming Conditional Use only because it existed in a place where Conditional Use approval would now be required; there were never any conditions placed on it. If it were just coming into the city now, it would have conditions. As Mr. Kandziora outlined in his letter, there are three requirements under Ch. 24.51 that must be met for approving a new conditional use: 1) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare; 2) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use; and 3) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Those are findings that must be made before approving a Conditional Use under the current code, but they were never made because Grede Foundry was essentially grandfathered, Mr. Kesner said. If you place these findings and other conditions relative to manner of operation, he advised, you then have the power under our ordinances to reevaluate the Conditional Use at a later date through the Plan Commission and Council, thereby retaining continuing jurisdiction over the use. Sec. 24.51.060 of the Code states: "Upon written complaint by any citizen or official, the plan commission shall initially determine whether such complaint indicates a reasonable probability that the subject conditional use is in violation of either one or more of the standards set forth in Section 24.51.020, a condition of approval or other requirement imposed hereunder. Upon reaching a positive initial determination, a hearing shall be held upon notice… The plan commission may, in order to bring the subject conditional use into compliance with the standards set forth in Section 24.51.020 or conditions previously imposed, recommend modification of existing conditions upon such use or impose additional reasonable conditions…"

If the committee chooses to take action, Mr. Kesner suggested that Grede Foundry would first at least need to be subjected to the normal Conditional Use criteria. Concerns would be forwarded to the Plan Commission, who could then formally notify the company that they are subject to the terms of the Conditional Use ordinances in the city. After they have been notified and given an opportunity to try to live under those conditions, a determination could be made on whether it is appropriate to take any action.

Ald. Sullivan expressed understanding and sympathy with the neighbors but indicated that this committee's concern should be with potential endangerment of public health. It seems that there are a number of additions and construction that have had no public review and that certain Conditional Use requirements are not being applied here, he said. He was concerned about uniformly applying those standards that exist for the benefit of the entire community and was also concerned about the issue of particulate matter, if what Mr. Kandziora says is true. He favored review by the Plan Commission and a more scientific examination of the matter.

> Moved by Ald. Sullivan, seconded by Ald. Becker to refer this matter to the Plan Commission to go through the appropriate route for a Conditional Use --

Ald. Kopischke asked if there are other conforming Conditional Use properties in the city with which it might be appropriate to take similar action. Mr. Kesner said that we have a lot of grandfathered Conditional Uses that are essentially Conditional Uses without conditions. He indicated that he is unaware of any particular complaints or concerns that rise to the level voiced here. It is a matter of addressing some issues that have been raised and maintaining continuing jurisdiction of some compliance issues. He said that he proposed the suggested course of

action as a means of moving forward after discussing the situation with some other municipal attorneys and doing some research into case law.

Ald. Kopischke said that he has had many conversations with Mr. Kandziora and his neighbors as well as with representatives of Grede. This seems to be a reasonable way to get an airing of the issues, he felt.

Ald. Treis asked about Grede's hours and days of operation. Mr. Kandziora said that at present they work two 12-hour shifts, operating 24 hours a day and working most weekends. They didn't work the evening of Christmas Eve or Christmas Day but did operate on other days around the holidays.

Asked by Ald. Treis for a further statement of his goals, Mr. Kandziora spoke of the additions made to the foundry without permit applications or notification of neighboring residents. Ald. Treis then asked if he is accusing the firm of putting up or razing buildings without the City's knowledge or inspection. Mr. Kandziora said that, as a lay person, that is his understanding—the City does not have any record of permits.

Ms. Welch indicated that it is possible that a building has been built or torn down without the City having any record of it. She has a list of permits going back to the original building permit issued in 1925. A permit for roof repairs would not trigger going through the Conditional Use process, she noted. There is a Conditional Use in 1980 for a 1,100 sq. ft. addition, and beyond that there are permits for things like gas fired heaters and internal remodeling. There is no record or Conditional Use application for a 7,200 sq. ft. addition in 1976.

Ald. Treis indicated that he would prefer to hold the matter for two weeks since he would like more information and clarification on such issues as whether the foundry's operating schedule and whether there are permits for building or tearing down facilities.

There was further discussion regarding the status of permits and Conditional Use approvals. Ald. Kopischke noted that some changes probably didn't come through for Conditional Use approval in part because staff didn't recognize that it would be appropriate. Ald. Sullivan clarified that his motion is Grede-specific but is not about shutting them down or tearing down buildings. If there are problems, we should know of them, he said.

Ald. Krol asked about the City's ability to measure public health for something of this magnitude and also inquired about measuring equipment or instrumentation. Mr. Kesner indicated that it normally becomes a quasi judicial determination by the Plan Commission or Council on whether public health is implicated or protected, but something considered in the Conditional Use context is not at the same level as our health department declaring a bio-hazard, for example. The DNR has done a lot of work and the health department has been aware, at least in the last year, of the situation here.

Ald. Krol indicated that he supports the motion but was concerned about the ability to make a determination without some very long and arduous litigation. Ald. Ecks commented that Wauwatosa has always been a manufacturing as well as residential town, and he noted that there has always been a noticeable smell in connection with the foundry. He wondered if the 1976 building for which a permit is lacking might be the source of the pollution. Ald. Becker also supported referral to the Plan Commission.

Roll call vote on the motion, Ayes: 7; Noes: 1 (Treis)

The meeting adjourned at 9:15 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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