

CITY OF MILWAUKEE

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Form CA-43

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September 16, 2002

Ronald D. Leonhardt, City Clerk
City Clerk's Office, Room 205
Milwaukee, WI 53202

Attn: Anthony Zielinski
Council Administration Manager

**RE: Common Council File No. 020785 – an ordinance relating to zoning regulations
for existing transmission towers used to transmit or receive television signals**

Dear Mr. Leonhardt:

Common Council File No. 011264 was considered at the September 4, 2002 regular meeting of the Common Council because it was the subject of a Mayoral veto. The Council failed to override the Mayoral veto on September 4, 2002 and at the same meeting introduced Common Council File No. 020785. File No. 020785 is substantively identical to File No. 011264, the only changes incorporated are updated references to reflect the recent recodification of the City's Zoning Ordinance.

In a September 10, 2002 letter our legal opinion was requested with respect to two specific issues. First, we were asked to provide an opinion as to whether File No. 020785 was required to be referred to the Plan Commission for its recommendation. In addition, we were asked to provide an opinion as to whether publication of a Class 2 Notice was required pursuant to State statutory provisions governing amendments to the Zoning Code or the requirements of the City Code.

In response to the first question, it is our opinion that neither the requirements of sec. 62.23(7), Stats. or the City's Zoning Code require resubmission of File No. 020785 to the

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City's Plan Commission. As we noted, in a July 26, 1996 legal opinion addressing similar facts relative to Common Council File No. 950722:

“[T]he decision in Herdeman v. City of Muskego, 116 Wis. 2d 687, 343 N.W.2d 814 (1983), . . . holds that only where amendments to an ordinance are ‘substantial’ will the ordinance require the Common Council to send a proposed ordinance back to the Plan Commission for further consideration.”

Inasmuch as the two files in question amending the zoning regulations applicable to transmission towers used to transmit or receive television signals are substantively identical, it is not necessary to refer the new file to the Plan Commission for renewed consideration.

With respect to the requirement for the provision of Class 2 Notice of a zoning amendment, which is set forth in sec. 62.23(7)(d)2., Stats., it is our opinion that a second Class 2 Notice is not mandated in this instance. The situation presented by these files is similar to that presented with respect to the planned unit development zoning considered by the Council for the Jewel Osco Project located at the Southeast corner of North Humboldt Avenue and West North Avenue. That rezoning action was the subject of a court challenge and the Supreme Court of Wisconsin issued a decision affirming the Common Council's action in Oliveira v. City of Milwaukee, 242 Wis. 2d 1, 624 N.W.2d 117 (2001). In that decision, the Supreme Court held as follows:

“No substantive difference exists between the original proposed zoning amendments, for which § 62.23(7)(d)2. notices [Class 2] were given, and the duplicate files containing the proposed zoning amendments that were adopted. The duplicate files containing the proposed zoning amendments affected the same people in the same manner as the proposed zoning amendments in the original files. A second § 62.23(7)(d)2. notice for a hearing before the steering and rules committee would provide the same people the opportunity to express the same views regarding the proposed zoning amendments. Accordingly we conclude that § 62.23(7)(d)2. does not require a second notice in the present case.”

242 Wis. 2d at p. 18, 624 N.W.2d at p. 124.

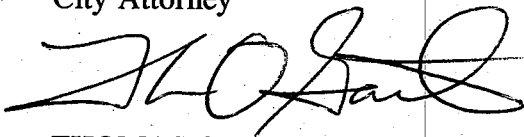
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Inasmuch as the two files addressed by this opinion are substantively identical, we believe that the rationale expressed by the Supreme Court in the Oliveira case applies in this instance and that a second Class 2 Notice is not required.

Very truly yours,



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City Attorney



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TOG/kg

c: Ald. Pratt
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