



FRIEBERT, FINERTY & ST. JOHN, S.C.

Two Plaza East - Suite 1250
330 East Kilbourn Ave. • Milwaukee, Wisconsin 53202
Phone 414-271-0130 • Fax 414-272-8191 • www.ffsj.com

ROBERT H. FRIEBERT
JOHN D. FINERTY
THOMAS W. ST. JOHN
WILLIAM B. GUIS
BRADDEN C. BACKER
S. TODD FARRIS
TED A. WARPINSKI
BRIAN R. SMIGELSKI
MATTHEW W. O'NEILL
MICHAEL MISHLOVE
LAWRENCE J. GLUSMAN
SHANNON A. ALLEN
JEREMY P. LEVINSON
BRIAN C. RANDALL
JENNIFER L. BOLGER
CHRISTOPHER M. MEULER

MEMORANDUM - URGENT

DATE: August 31, 2004
TO: THE HONORABLE, THE COMMON COUNCIL
OF THE CITY OF MILWAUKEE
FROM: John D. Finerty
Attorney
Friebert, Finerty & St. John, S..C.
RE: Jewel-Osco Store at 1100 East Garfield Avenue in the 6th Aldermanic District

The purpose of this communication is to clear up substantial misinformation regarding a deed restriction that has been placed on a building located at West Oklahoma Avenue and South 13th Street, previously owned by Jewel-Osco.

Use of this kind of deed restriction is common practice throughout the United States including the Milwaukee area and has been unfairly linked to Jewel-Osco's legitimate attempt to obtain a Class "A" liquor and malt license for its store located at 1100 East Garfield Avenue.

This restriction is a standard business practice between buyers and sellers in today's economy and it is unfair and illegal for the city to link its removal to a possible grant of a liquor license in another part of the city.

As policy makers, you are encouraged to give your full consideration of the facts behind this matter. Facts, I might add, that are not being discussed by the opponents of the deed restriction or examined fairly by the media. Please consider the following:

□ **Deed restrictions are a common commercial property transaction and fully enforceable in Wisconsin courts:**

Not only do retail grocery businesses but also automobile dealers, drug stores, oil companies and other retail operations use various deed restrictions when selling a previously owned location. This is a private commercial transaction between buyer and seller and has substantial financial significance to both parties.

□ **Deed restrictions are not a restraint of trade:**

Deed restrictions are a restriction on the use of property. The new owner and developer of the property at South 13th Street acquired the building with full and complete knowledge of the recorded restriction, which was clearly a consideration in reducing the purchase price. The new owner is now attempting to lease the property for a variety of uses. There are several other nearby sites that could be used by a smaller grocery store operation. This is **not**

The Honorable, The Common Council
of the City of Milwaukee
August 31, 2004
Page 2

the only potential site for a grocery store in the area. The developer can approach Jewel-Osco at any time and negotiate to buy out the restriction.

- **Attempts to link this issue to the issuance of a liquor license in exchange for lifting the restriction are illegal.**

It is quite a leap to link the granting of a liquor license in the 6th Aldermanic District to the demand to remove an **agreed upon** restriction that is a component of a private business transaction in the 14th Aldermanic District. There is **no rational relationship between the two**. Those who have joined in attempts to leverage the license issue in exchange for removing the restriction must consider the potential legal liability to the city for imposing an exaction of this kind.

Residents have raised concerns about their lack of a neighborhood grocery store. It is important to know that there are three grocery stores within a mile of the South 13th Street location. Further, there are other sites within two blocks of this one which could accommodate a grocery store. Rather than a real social problem, this issue is essentially about cost and convenience for a private real estate developer and a putative tenant.