

# CITY OF MILWAUKEE

Form CA-43

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November 5, 2002

Zoning, Neighborhoods & Development Committee  
of the Common Council  
City Hall, Room 205

Re: CCFN 020856 – Protest Petition (Rezoning of a General Planned Development  
Known as Le Parc House, on the South Side of West Donna Drive and West of  
North 107<sup>th</sup> Street)

Dear Committee Members:

This office has been requested to review the protest petition filed with respect to a proposed substitute ordinance relating to a rezoning of the above-referenced General Planned Development project. Based upon the language of the petition, the protest is directed at construction of one or more 3-story structures as part of this project. We have reviewed the petition, and find that it is invalid, for two reasons.

First, the text of the petition at its first line indicates that the signatories thereof attest that they live “within 300 feet adjacent to the Finlay Development located 107<sup>th</sup> Street and W. Donna Drive.” This does not conform to the distance requirement set forth by the applicable statute and ordinance pertaining to the validity of protest petitions. In this respect, § 62.23(7)(d)(2m).a. Wis. Stats., states as follows:

In case of a protest against an amendment proposed under subd. 2, duly signed and acknowledged by the owners of 20% or more either of the areas of the land included in such proposed amendment, or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the

favorable vote of three-fourths of the members of the council voting on the proposed change.

Similarly, § 295-307-5, Milwaukee Code of Ordinances, states, in pertinent part, as follows:

**5. PROTEST OF MAP AMENDMENT.** In case of a protest against a map amendment, duly signed and acknowledged by the owners of 20% or more of the area of the land included in the proposed change, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of the opposite land, the amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the common council voting on the proposed change . . .

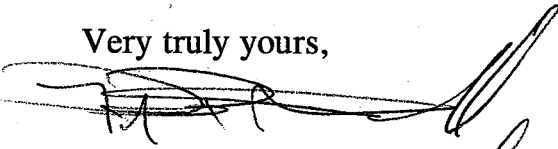
Thus, according to the statute, there are three categories of property owners whose assent is material to the validity of a protest petition: (1) owners of property within the area affected by a proposed zoning change; (2) owners of immediately-adjacent land located within 100 feet of the area affected by the proposed change; and (3) owners of land located directly opposite to the area affected by the proposed change and extending 100 feet from the street frontage of the land located directly opposite thereto. The City ordinance includes categories (1) and (3) but not category (2). In any event, neither the statute nor the ordinance refers to a standard of 300 feet distant from the affected area, in the manner referenced by this protest petition. The collection of signatures from property owners located within 300 feet of the affected area neither conforms to the statute and/or ordinance nor provides a reliable indication as to whether the protest petition is valid because that petition may well contain signatures that are irrelevant. These would include any individuals satisfying the petition organizers' 300 foot rule, but not satisfying the requirements of the statute or ordinance. Signatures that do not satisfy those requirements are, by definition, invalid.

Second, we advise that the form of acknowledgement utilized on the protest petition is also invalid. Both the statute and the ordinance referenced above require that protest petitions be "duly signed and acknowledged." The proper form for acknowledgement in an individual capacity is set forth by § 706.08(8)(a) Wis. Stats.; neither this form nor any similar form of acknowledgement was utilized in this instance. While the protest

petition does purport to show the signature of a notary on the bottom of each page thereof, the notarization does not even indicate the identity of the person whose signature is allegedly being acknowledged; nor does it indicate that the acknowledgement occurred in person before the notary. Instead, it simply indicates the identity of the notary, the county of notarization, and the expiration date of the notary's commission, underneath the line stating that: "the above signatures have been collected by Ross Reinke of 8325 N. 111<sup>th</sup> Street, Milwaukee, WI," and the signature of Mr. Reinke. We advise that this attempted notarization does not satisfy the requirements of either § 62.23(7)(d)(2m)a. Wis. Stats. or § 295-307-5, Milwaukee Code of Ordinances, that the signatures of the protesting owners be "duly signed and acknowledged."

If you have any further questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

  
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