

# CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY  
City Attorney

RUDOLPH M. KONRAD  
PATRICK B. McDONNELL  
LINDA ULISS BURKE  
Deputy City Attorneys



OFFICE OF CITY ATTORNEY  
800 CITY HALL  
200 EAST WELLS STREET  
MILWAUKEE, WISCONSIN 53202-3551  
TELEPHONE (414) 286-2601  
TDD (414) 286-2025  
FAX (414) 286-8550

June 29, 2004

To the Honorable Committee on  
Zoning, Neighborhoods & Development  
of the Common Council  
Room 205 - City Hall

Re: CCFN 031605 - Protest Petition (Rezoning of a Two-Family Residential  
Area to a Detailed Planned Development on Land Located on the South  
Side of West Stark Street, West of North 46<sup>th</sup> Street)

Dear Committee Members:

You have requested that this office review a protest petition filed with respect to the above-referenced ordinance. This ordinance relates to a rezoning of an area currently zoned two-family residential to a Detailed Planned Development for the purpose of constructing six dwelling units of row houses with detached garages on the affected real estate. We have reviewed this petition, and find that it is invalid.

The only documents that have been submitted to us for review consist of three pages of signatures (including name, address, and date of signature) and a fax transmission sheet. Neither the name of the circulator of the petition nor any notarization or acknowledgment of the signatures appears anywhere on the documents in this file. This purported protest petition therefore fails to comply with both the applicable state statute and the applicable city ordinance governing the requisites for submission of a valid rezoning protest petition.

In this respect, Wis. Stat. § 62.23(7)(d)(2m)a., states as follows:

In case of a protest against an amendment proposed under subd. 2, **duly signed and acknowledged** by the owners of 20 percent or more either of the areas of the land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite

BEVERLY A. TEMPLE  
THOMAS O. GARTNER  
BRUCE D. SCHRIMPF  
ROXANE L. CRAWFORD  
SUSAN D. BICKERT  
HAZEL MOSLEY  
HARRY A. STEIN  
STUART S. MUKAMAL  
THOMAS J. BEAMISH  
MAURITA F. HOUREN  
JOHN J. HEINEN  
MICHAEL G. TOBIN  
DAVID J. STANOSZ  
SUSAN E. LAPPEN  
JAN A. SMOKOWICZ  
PATRICIA A. FRICKER  
HEIDI WICK SPOERL  
KURT A. BEHLING  
GREGG C. HAGOPIAN  
ELLEN H. TANGEN  
MELANIE R. SWANK  
JAY A. UNORA  
DONALD L. SCHRIEFER  
EDWARD M. EHRlich  
LEONARD A. TOKUS  
MIRIAM R. HORWITZ  
MARYNELL REGAN  
G. O'SULLIVAN-CROWLEY  
DAWN M. BOLAND  
KATHRYN M. ZALEWSKI

Assistant City Attorneys

To the Honorable Committee on  
Zoning, Neighborhoods & Development  
of the Common Council  
June 29, 2004  
Page 2

thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of 3/4ths of the members of the council voting on the proposed change.

(Emphasis added). Similarly, Milwaukee Code of Ordinances § 295-307-5 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 percent or more of the area of the land included in the proposed change, or by the owners of 20 percent 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 3/4ths of the members of the common council voting on the proposed change. . . .

(Emphasis added). The protest petition submitted to us for review includes no attempt at a proper acknowledgment or notarization of the signatures collected. Both the statute and the ordinance quoted above require that protest petitions be “duly signed and acknowledged.” The proper form for acknowledgment in an individual capacity is set forth by Wis. Stat. § 706.08. This form or a suitable equivalent requires: (1) a proper form of notarization or acknowledgment; (2) an indication of the identity of the persons whose signatures are allegedly being notarized or acknowledged; and (3) an indication that the notarization or acknowledgment occurred in person before a notary public. Because no attempt at compliance with these requirements was made, the form of protest petition submitted for review is invalid.

This purported protest petition is invalid for three additional reasons, as follows:

1. The signatories upon the three pages of signatures are identified as “undersigned electors of the City of Milwaukee, County of Milwaukee, State of Wisconsin.” Status as an “elector” is irrelevant for purposes of validating a protest petition. Both the statute and the ordinance quoted above specifically indicate that only property owners are pertinent for this purposes, not “electors.”

To the Honorable Committee on  
Zoning, Neighborhoods & Development  
of the Common Council  
June 29, 2004  
Page 3


2. Furthermore, there are only three categories of property owners whose assent is material to the validity of a protest petition: (a) owners of property within the area affected by a proposed zoning change; (b) 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. Signatures that do not satisfy these requirements are, by definition, invalid. The protest petition submitted to us for review does not indicate which of the signatories are "owners" of land within any of the three subcategories noted above. Because there is no way to determine whether any of the signatures submitted upon these documents satisfies these requirements, they are all invalid.
  
3. Additionally, one of the signatures (specifically, the fourth signature on the page whose first signatory is "Marcella C. Williams" of 4872 North 46 Street) lacks an address, and is therefore invalid for that reason as well.

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

Very truly yours,



GRANT F. LANGLEY  
City Attorney



STUART S. MUKAMAL  
Assistant City Attorney

SSM:lmb  
1121-2004-1873:82479