



# City of Milwaukee

200 E. Wells Street  
Milwaukee, Wisconsin  
53202

## Meeting Minutes

### ZONING CODE TECHNICAL COMMITTEE

**TEODROS MEDHIN, CHAIR**

**Stuart Mukamal, Ed Richardson, Ronald Roberts**

**Staff Assistant, Chris Lee, 286-2232**

**Fax: 286-3456, [clee@milwaukee.gov](mailto:clee@milwaukee.gov)**

**Legislative Liaison, Ted Medhin, 286-8680,**

**[tmedhi@milwaukee.gov](mailto:tmedhi@milwaukee.gov)**

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Wednesday, December 7, 2016

2:30 PM

Room 301-B, Third Floor, City Hall

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Meeting convened at 2:34 p.m.

*Present - Roberts, Richardson, Mukamal, Medhin*

**Individual also present:**

*Jeff Osterman, Legislative Reference Bureau*

1. [160994](#) An ordinance relating to board of zoning appeals findings with respect to special use permit applications.

**Sponsors:** THE CHAIR

*Atty. Mukamal gave an overview. The proposed legislation originated from him. It removes the mandatory criterion that special use permit applications be consistent with the comprehensive plan. The amendment legislation makes consistency with the comprehensive plan in conjunction with special use permit applications discretionary rather than mandatory. The proposal allows the Board of Zoning Appeals (BOZA) to consider provisions of a comprehensive plan as part of the evidence of record for review of special use permit applications, but it is not bound by the comprehensive plan. State law, through Wisconsin Act 391, preempts the current comprehensive plan consistency requirement and makes that criterion illegal. There should not be illegal and unenforceable provisions in the zoning code. He is mindful of and disagrees with the contrary opinion of Professor Brian Ohm.*

*Mr. Richardson objected. Professor Ohm is a law professor who specializes in land use law, works closely with the American Planning Association Wisconsin Chapter, and tracks state issues tremendously. The prior Smart Growth legislation required special use permit applications to comply with comprehensive plans. Other municipalities such as Appleton, Racine, and Brookfield have the same provisions requiring special use permit applications be consistent with the respective comprehensive plans.*

*Atty. Mukamal replied. The prior Smart Growth law was silent and did not mandate the requirement for consistency with the comprehensive plan as applied to zoning tribunal determinations. Prior to Act 391, local governments were left to make determinations. Act 391 states that the determinations of zoning tribunals need not be consistent with the comprehensive plan. His office cannot defend BOZA from denying a special use permit based solely on inconsistency with the comprehensive*

*plan. Such decisions are illegal and subject to court reversal.*

*Mr. Roberts said that the proposed ordinance amendment would allow BOZA, in its sole discretion, to consider applicable elements of a comprehensive plan. Giving BOZA this discretion is an improvement. Comprehensive plans are not being ruled out. Elements of a comprehensive plan can be considered on their own merits with better administrative records being made on those elements.*

*Mr. Richardson expressed concerns pertaining to administrative efficiency and consistency with the format of the zoning code. First, the location of the proposed amendment is several pages after the section on BOZA's general review criteria. It would be difficult to locate or know the discretionary provision, as proposed, for anyone not familiar with the zoning code. Second, the proposed amendment does nothing to indicate how and to what extent comprehensive plans come into consideration by BOZA.*

*Mr. Osterman said that the proposed location of the amendment ordinance was suggested by Atty. Mukamal and would not require renumbering of all paragraphs preceding it. If desired, the proposed provision can be relocated to follow the section on BOZA general review criteria.*

*Mr. Richardson said that relocating the proposed amendment to be closer to the criteria section would be an improvement, but he still opposed the content of the proposed amendment.*

*Atty. Mukamal moved that the proposed ordinance draft, subject to the new criterion being relocated to an appropriate location closer to the BOZA findings and criteria section, meets the standards of legality and enforceability, consistency with the format of the zoning code, and administrative efficiency. Seconded by Mr. Roberts. (Prevailed 3-1) Objecting was Mr. Richardson.*

2. [161041](#)

An ordinance relating to common council reconsideration of applications for amendments to the zoning map that have been denied.

**Sponsors:** Ald. Bohl

*Mr. Osterman gave a brief overview. The proposed ordinance originated from the City Clerk. It first clarifies that the proper term is "reconsideration" and not "resubmission". Secondly, it permits only the Common Council to initiate reconsideration of a zoning map amendment denied by the Council once during the 12-month period after the denial. Notice of an intention to reconsider would be required. A three-fourths favorable vote for reconsideration would be required for those zoning map amendments with a sufficient protest petition.*

*Atty. Mukamal said that the impetus for the proposed ordinance is to precluded repeated requests filed by proponents of particular zoning map amendments after the defeat of those zoning map amendments.*

*Mr. Roberts said that the proposed ordinance is designed to limit arbitrary multiple reconsiderations by the Common Council on zoning map amendments denied by the Common Council. He inquired about applicant resubmittals and s. 295-307-8-b.*

*Mr. Osterman said that there is a one-year blanket requirement for reconsideration and Ch. 295-307-8-b speaks to specific situations and changes to comprehensive plans.*

*Mr. Roberts moved that the proposed ordinance draft meets the standards of legality and enforceability, consistency with the format of the zoning code, and administrative efficiency. Seconded by Mr. Richardson. (Prevailed 4-0) There were no objections.*

**Meeting adjourned at 2:53 p.m.**  
**Chris Lee, Staff Assistant**