

## MEMORANDUM

TO: City of Milwaukee Plan Commission

FROM: John M. Wirth, counsel for Save MKE's Music Scene LLC

SUBJECT: The Live Nation/Frank Productions Proposed Concert Venue Building Has no Safety Plan and Requires the City to Ignore the Carefully Constructed Zoning Commitments, Requirements and Goals for the Deer District

DATE: October 12, 2023

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A year ago, the developer came before the Plan Commission, and the Plan Commission expressed many concerns. The Plan Commission narrowly approved the application on a 3-2 vote but imposed several conditions.

Despite all of last year's uproar, and having obtained approvals of a clearly deficient plan, the applicant did not build the project.

Instead, the developer has decided to see how far it can push the City. It is asking: **if the City approved a deficient plan, can we get away with an even worse and more deficient plan?**

This Memorandum focuses on two significant issues:

- (1) Live Nation/Frank Productions' indifference to the neighborhood's safety; and
- (2) The serious deficiencies under the City of Milwaukee's zoning and land use plan of the proposed Live Nation/Frank Productions music venue proposal.

There are many other important issues – safety; the harm to the convention center; the disaster this creates for Milwaukee's many vibrant music venues; the harm to the employees of those venues; and the harm to the neighborhoods and businesses that surround those venues. Any one of those issues should disqualify this application. Taken together, it should be easy to vote no.

**At a minimum, the Plan Commission should hold the application over until:**

- A. The developer moves the building back to the road front on the east, or the developer agrees to a time by which Lot 2 will be developed pursuant to the GPD with an agreement for some very substantial penalty if it fails to do so;**
- B. The developer submits a detailed preliminary safety plan with a commitment to implement the plan and an agreement for some substantial penalty if it fails to do so; and**

- C. **The developer submits a plan for the unloading, parking and loading of the semis and busses used by performers and the private parking needs for those performers.**

## **I. SAFETY PLAN.**

Last year, the Plan Commission made the following a condition of approval:

**That a preliminary safety plan for the venue be submitted to the file to be considered as part of the project review at ZND.**

Live Nation/Frank Productions thumbed their nose at the Plan Commission. They prepared a document, but never submitted it to ZND. They argued that it should be secret. The press never saw it. The public never saw it. The aldermen on ZND never saw it. And the Common Council never saw it. Effectively, it was irrelevant.

It was only made public through a response to an open records request long after Live Nation/Frank Productions had their approvals.

So, why the secrecy? One would assume it was kept secret because there is something in it that is secret, proprietary or customized. But, when reviewing it, it is clear that is not the case. Instead, it apparently was kept secret because Live Nation/Frank Productions did not want the public to know how little thought went into it. Long and substantive are not the same thing.

The so-called safety plan (attached) is nothing but a long, generic document. There is almost no customization for this project and does not address the unique safety concerns posed by this project.

- Instead of presenting policies and procedures, the plan provides, on pages 16 to 24, a long list of policies and procedures that have not been created. The applicant says it will create those policies and procedures. When? It does not say. There is no mechanism for holding them accountable for doing so. There is no mechanism for ensuring that the policies and procedures are adequate.
- The plan fails to address how control will be kept and safety ensured when a Bucks game or other even occurs at the same time as a concert in this venue and when the two events put 20,000 to 25,000 people on the streets at the same time.
- All other hospitality venues in the City are required to create plans for ensuring their surrounding neighborhoods are safe, particularly before and after events. The Live Nation/Frank Productions plan has none of that.

The Plan Commission asked for a safety plan. Instead, the developer prepared a suggestion that it would create a plan someday.

There are already too many incidents in this immediate area. Milwaukee will never have vibrant development until it addresses crime. This venue will bring together thousands of young people who are drinking and smoking. Without an adequate safety plan, it will attract violence and other misbehavior.

Now is the time to get this right. Do not grant the developers' application unless and until they present a thorough safety plan, and if that occurs, and if you approve the application, condition your approval on compliance with that plan.

## **II. PLANNING DEFICIENCIES.**

When Milwaukee has been disciplined and stuck to its carefully crafted plans, the City has enabled vibrant and sustainable urban neighborhoods like the Third Ward, the Brewery District and the East Side. When it has given in to political pressure or the temptation of quick tax revenues, it has harmed neighborhoods for decades or generations and lost out on the higher tax revenues it expected.

For example, when the convention center was being planned, there was a sea of asphalt along Kilbourn that did not fit the neighborhood plan. The developers asked the City to exclude that parking lot from their immediate plans. It promised that it would develop it within five years. The City gave in. As a result, the City was left with a no-man's desert for about 25 years.

The developer wants to repeat that mistake. If this plan is approved, North Vel R. Phillips Avenue will be forever adversely affected. It will not be the activated, walkable, human-scale, multi-use area required by the City's plan.

Additionally, if the application is approved, North 5<sup>th</sup> Street will never be the pedestrian friendly street or area envisioned when the Deer District plan was formed. Instead, it will forever be no more than an ugly alley.

The Bucks proposed, and the City approved, the Milwaukee Bucks General Planned Development (GPD). Rather than following the GPD, the developer is asking you to fundamentally ignore the plan.

The City gave this land to the Deer District for FREE and created TID financing. The City expected perpetual tax revenue from a well-done, vertically built, mixed-use, urban development. Instead, with this venue, the City will receive even less than the minimum standards set forth in the GPD.

It is common for developers to ask for relief from zoning ordinances. However, the requests by the developer are exceedingly unusual. Applicants usually seek **more**: more density, more massing; more height; more lot coverage, more and different uses than those are allowed under the code.

In contrast, this developer is seeking less: less density, less height, less lot coverage, less fenestration, far fewer windows. Instead of a tall, mixed-use, street enhancing project, the developer asks the City to approve a single use building that provides no street activation.

**NOW, THE DEVELOPER SEEKS TO BUILD EVEN LESS THAN THE SUBSTANDARD BUILDING THE CITY APPROVED A YEAR AGO. This just reduces the return the City receives from its investment in the Deer District.**

Rather than developing a new, vibrant, mixed-use urban neighborhood like The Brewery District or the Third Ward, the developer wants the City to accept a suburban-like, single-use building with a potential, but unlikely, adjacent substandard building. And it creates the small adjacent parcel to avoid many requirements.

The City is seeking density and tax revenues. The Mayor has a goal of a million residents. To get there, the City should be insisting on more, not accepting less.

Rather than designing a project that fits the General Planned Development (GPD) standards, the developer has taken the building it planned for Summerfest, turned it slightly and plopped it on this site.

**If this block were to be developed as the Bucks agreed in the GPD, with a large mixed-use facility of, say 10 or 12 stories, that covers most of the Block, the tax impact would be multiples of what will result from this proposal.** Once this is built, it will be too late.

### **III. THIS PROPOSAL FAILS TO FULFILL THE CITY'S AND THE DEVELOPER'S COMMITMENT TO TURNER HALL**

Before addressing the bigger picture zoning issues involved in this application, it is important to focus on a very specific promise made when the Deer District was proposed.

Both the GPD and the Design Standards for Block 3 provide:

**“Turner Hall, a historic Milwaukee landmark is located on the east side of North Street. The design of any development on Block 3 shall be sympathetic to Turner Hall.”<sup>1</sup>**

The developer suggests that, someday, a building will be built between the venue and Turner Hall, and then there will be some design feature that will be good for Turner Hall.

Why not now? What commitment can the City rely on that something will ever be built?

Is a **large blank wall with advertising**, or the use of the property to compete with Turner Hall, sympathetic to Turner Hall?

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<sup>1</sup> Highlighted provisions are direct quotes from the General Planned Development (GPD) standards.

**The developer should be required to fulfill its commitment to Turner Hall now.** In just nine years, the developer has changed and diminished its plans for this property. You can bet it will again change its tune when (if ever) it proposes something for Lot 2. You can hear them now: “The economics do not allow for the construction of anything interesting on Lot 2 or to cover the 50 feet of blank wall south of Lot 2 in the southeast corner of the venue building.”

**IV. THE DEVELOPER COULD BUILD THE PROJECT UP TO NORTH VEL R. PHILLIPS STREET; HOWEVER, THE DEVELOPER DOES NOT WANT TO DO THE REDESIGN OR INCUR THE COST REQUIRED.**

In reducing the size of the building, the developer again moved it back from There is nothing unique to this proposal to require the orphan Lot 2. There are concerts venues in many locations, including in Madison (owned by the same developer), that are designed with windows and architectural detail facing multiple streets.

Fewer windows and less architectural detail are cheaper. Milwaukee is getting a C- project, while other cities that persist in maintaining design standards get better projects.

The following is a portion of the design plan for the project:



Yet, this proposal violates the language and spirit of the Park East Redevelopment Plan McKinley Avenue District, as incorporated in the GPD.

The lack of buildings fronting Vel R. Phillips (4<sup>th</sup>) Street, and the flat, windowless walls facing east and west are precisely what the City does not want. This proposal fails to meet the following goals and values of the GPD:

- **Windows and Glazing (see above)**
- **Mixed-Use**
- **4 to 20 Story Buildings**
- **Street Activation**
- **Enrichment of the pedestrian realm**
- **Human scale qualities**
- **Few or No Flat Facades**
- **Horizontal and vertical modulation**
- **Articulation**

B. Large, Mixed-Use Building That Covers the Majority of the Site.

According to the GPD, the proposed building is not the type of building that should be built here:

“Block 3 of the development will be the location of a new mixed use building that includes potential uses as described in the GPD Design Standards. The mixed use building will cover the majority of the site.”

Yet, this proposal does not cover the majority of the site and is not a mixed-use building. The standards allow for up to three buildings; however, it is clear that the majority of the Block should be covered by one large building, not two mid-sized buildings and one tiny building that likely will never be built. Also, only one of the three buildings might be mixed-use. That was not the agreement when the GPD was enacted.<sup>2</sup>

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<sup>2</sup> Even the Buck’s Term Sheet dated as of September 22, 2015, that it submitted to the City envisioned a 300-key hotel plus retail for Block 3. Now, they are talking about a hotel only slightly more than half that size.

C. The Proposal Does Not “Enhance the Street Experience” or “Ensure Continuity of the Social Street Front.”

According to the GPD, buildings built on this Block are supposed to:

“[E]nhance the street experience”

And

“New major entertainment venues ... must fit within the prescribed pattern of lots and blocks and most importantly, ensure continuity of the social street front.”

Rather than enhancing “the street experience” and ensuring “the social street front,” this proposal ignores the street experience on Vel R. Phillips (4<sup>th</sup> Street) and turns 5<sup>th</sup> Street into a perpetual, ugly alleyway.<sup>3</sup>

If an appropriate building were to be built on this Lot, Vel R. Phillips would have somewhere between 204-feet to 260-feet of attractive street frontage of windows and architectural detail. Instead, there will be none for at least a long time. There will be little or nothing activating or ensuring the street experience.

Moreover, a concert venue does not enhance the “street experience.” A 300-room hotel, as envisioned when the TID was enacted (see Bucks’ Term Sheet dated September 22, 2015), would ensure pedestrians coming and going 24/7, 365 days per year (the applicant now suggests it might only be 160 rooms). This concert venue is projected to be used for perhaps one-sixth of those days.

D. Lot 2 is a Work-Around of Many Other Requirements of the GPD.

By moving the building back 95 feet, and leaving a small lot for future development, the developer is attempting to totally avoid the following requirements of the GPD. In the process, the nature of the neighborhood will be totally different than the urban, street activated plan of the city.

**Section 4.1. Street Activation Requirements**

“Visual interaction with all stories of the building is encouraged, visual interaction by means of clear, non-tinted windows (glazing) is required along the street frontage of a building.

Where required glazing is provided along the ground floor, the area behind the glazing must be Street Activating Uses for a minimum of 12 feet in depth.”

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<sup>3</sup> The Bucks’ Term Sheet dated September 22, 2015, envisioned a pedestrian area on 5<sup>th</sup> Street and even contemplated the following: “Rebuild 5th Street from ... State to Highland if needed in coordination with the development of Blocks 2 and 3.” The Term Sheet also envisioned a 300-key hotel and retail for Block 3.



#### Section 4.1.2 Street Activation Uses

“For Entertainment/Accommodation Uses, the following **Street Activating** Uses are permitted ... For hotels, Large Venue Buildings and other places of accommodation, lobbies, customer service areas, restaurants and bar areas, coffee shops, gift shops, and often used gathering and meeting breakout areas are appropriate.”

#### 4.1.4. Materials

“**Enrichment of the pedestrian realm** requires building base materials to be of high quality, such as stone, brick, metal panel systems, and other durable materials.”

#### 4.1.5. Detailing Enrichments

“Detailing of the base of buildings should be used to enhance the **human scale qualities** of the building. On all types of buildings, the building base should be distinctly noticeable from the middle portion of the building. Cornices, friezes, hoods, canopies or other expressive elements should demark the separation of these portions of the buildings.”

#### 4.2.1 Building Articulation

“**‘Flat’ facades should be avoided.** When dissimilar materials of the exterior cladding meet, a distinct variation in surface plane must be present.”

#### 4.2.2 Low Activation /Ground Level Walls

“Where there is a “Low Activation No Glazing Requirement”, as noted on the individual block standard diagrams, the following standards will be required to mitigate the potential negative effects of a non activated wall:

High quality materials must be used. ... Materials ... which do not offer an appropriate finish or scale [must not be used]. Simulated stucco and metals siding products do not provide the durability and must be avoided. ...

**Horizontal modulation** is needed to break down a long, blank wall. ...

**Vertical modulation** is needed to give a sense of human scale to the wall. A distinct base level is needed at approximately 2’ to 4’ above the grade. In this ground level, an upper differentiation approximately 7’ to 9’ above the grade is needed to give a sense of **human scale**, normally found with typical door and window heights.

**Pedestrian-scaled** elements are needed to increase interest and decrease monotony, especially in the case of a long non-active wall. A number of techniques could be employed. These include display cases, engaged planters, green-screen wall systems, backlit windows with opaque glass, and decorative lighting elements. The need for these elements will be building and site specific, but must occur in at least every other bay of horizontal modulation. These elements must help to create ‘layered’ quality to the façade wall.

In some cases, uses which may not programmatically allow windows, consider frosted or fritted windows to obscure vision but allow light to spill out from the interior.”

#### 4.2.4 Large Format Uses Façade Design

“These standards are for facades, specifically area above the ground level, where the use includes large format interior spaces that often have programmatic difficulty with significant clear glazed windows at the façade wall. This includes uses such as gymnasiums, theaters, assembly spaces, large format retail stores and similar scaled and programmed uses.

The building’s larger design solution should contemplate not locating the larger interior spaces along street edges and those spaces being placed more interior to the site. Also, a liner of uses such as lobby spaces, lounges, offices, etc. should be considered to allow activation and glazing along the street frontage. Where this placement approach or liner uses is not possible, various techniques should be utilized to allow the large format uses to be appropriately designed for placement along the street facades. Following are standards to achieve this:

Breaking down the resulting large façade is key to mitigating design challenges posed by large format uses. Incorporating any clerestory windows or narrow, regularly spaced opaque windows is a method that is encouraged.”

#### 4.2.6. Detailing and Enrichments

“For Large Venue Buildings, wall areas above the building base should be **articulated**. Flat, windowless walls should be avoided.”

**VI. THE PLAN APPROVED A YEAR AGO WAS INADEQUATE. THIS IS WORSE.**

The City gave this land away to increase the City's tax base. The building approved a year ago did the minimum amount required (if that) and was far short of the original expectations. Live Nation/Frank Productions is proposing this lesser plan because the original plan cost too much. Obviously, this scaled-down building will pay even less in taxes.

**VII. THE CITY IS ASKED TO RELY ON EMPTY PROMISES WITH NO ACCOUNTABILITY.**

Staff, in its report, justifies all of the failures of this plan as follows:

Arena District ownership have committed to aggressively marketing Lot 2 and constructing a building on this site that would bring this portion of the block into compliance with GPD standards, and these commitments were a factor relied upon by DCD in the staff review of this proposal and recommendation related to consistency with the overall intent of the GPD.

- First, this is an admission that this building is not consistent with the overall intent of the GPD.
- There is no analysis in this application demonstrating that there is a market for Lot 2.
- Third, there is nothing that requires aggressive marketing. An oral "promise" has no teeth. This is nothing but an empty promise. There is no accountability.

**AT A MINIMUM, BUILD IN SOME PENALTY IF THE ARENA DISTRICT OWNERSHIP FAILS TO SELL THE PROPERTY FOR A COMPLIANT BUILDING WITHIN A REASONABLE TIME.**

**VIII. THE OPERATIONAL PLAN IS FLAWED.**

Although the developer provided a place for loading of some equipment and parking of the associated vehicles, and the Code does not mandate specific parking for customers, the developer's operational plan is flawed.

First, if they have two shows, they will need space for 14 to 18 semis and buses. There is not enough space for the unloading, parking and loading of those large vehicles.

Second, they will need secured or close parking for performers. Performers will insist on that parking. A simple show could require parking for four or five vehicles with trailers. Two shows would double that number.

The developer or promoter will either park those vehicles illegally or will come back to the City for further accommodations. We fully expect the promoter to park those vehicles illegally on the new Lot 3 or on one of the plazas.

## CONCLUSION

The City envisioned, and the developer promised, a vertically built, mixed-use, urban development that enhances an activated, walkable, human-scale neighborhood. Instead, Live Nation/Frank Productions proposes a development that misses the mark on many requirements. The music venue building is a single use building that meets only the district's minimum height requirement and shows giant ugly blank walls to streets to the east and west. It fails to fulfill the City's commitment to Turner Hall. Moreover, to try to get it done, the developer leaves an orphan 95-foot lot for a another single-use building which might someday reach the street with a small building.

If the developer were to build the development promised in the GPD, a great new neighborhood would be born. Instead, this will not be the activated, walkable, human-scale neighborhood that the City envisioned, and the developer promised.

As importantly, the tax impact of the promised development described in the GPD would be multiples of what this will generate.

The Common Council should require the developer to fulfill its promises. The City should expect the best possible development, not a watered-down version that requires standards to be reduced from those the developer promised.

**This revised plan delivers even less to the City than the one approved a year ago. If the Plan Commission concludes that it is too late to stop this project – it is not – then we urge the Plan Commission to hold this proposal over until:**

- A. The developer moves the building back to the road front on the east, or the developer agrees to a time by which Lot 2 will be developed pursuant to the GPD with an agreement for some very substantial penalty if it fails to do so;**
- B. The developer submits a detailed preliminary safety plan with a commitment to implement the plan and an agreement for some substantial penalty if it fails to do so; and**
- C. The developer submits a plan for the unloading, parking and loading of the semis and busses used by performers and the private parking needs for those performers.**