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June 27, 2017

VIA E-MAIL

Mr. James R. Owczarski
City Clerk
City of Milwaukee
City Hall - Room 205
200 East Wells Street
Milwaukee, WI 53202

ROBERT H. FRIEBERT
(1938-2013)

EMERITUS
JOHN D. FINERTY

OF COUNSEL
THOMAS W. ST. JOHN

RE: File No. 170030, Resolution approving a final Certified Survey Map for land located on the south side of West Layton Avenue and west of South 20th Street to divide a portion of one parcel into two parcels and to dedicate land for public street purposes, in the 13th Aldermanic District

SUBJ: Request for Certification of Approval of Certified Survey Map Pursuant to Wis. Stat. § 236.34(1m)(f) based upon Common Council's Failure to Act within 90 Days of Submission

Dear Mr. Owczarski:

This firm represents WoodSpring Suites Milwaukee Airport LLC ("WoodSpring"), the developer of a new hotel on property located at 1701 West Layton Avenue in the 13th Aldermanic District. WoodSpring executed a Real Estate Sale and Purchase Contract to purchase the property that is currently owned by the Wisconsin Department of Transportation ("WisDOT"). WoodSpring's surveyor worked over many months with City staff to prepare a preliminary map and ultimately the Final Certified Survey Map ("CSM") that is marked as DCD No. 3104 and contained in File No. 170030.

WoodSpring's CSM was submitted on March 21, 2017 by Kurt Klapperich of CBRE, WisDOT's real estate broker, in person to Bill Fuchs of the City of Milwaukee Department of Public Works.

Wis. Stat. § 236.34(1m)(f) sets forth a ninety (90) day deadline for Common Council action on the CSM with failure to take final action within 90 days being deemed an approval of WoodSpring's CSM. The statute provides:

Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.

Demand is hereby made for your certification that the Common Council failed to act within 90 days (on or before June 19, 2017) and that the period was not extended by agreement.

The Wisconsin Supreme Court, in cases interpreting similar language in Wis. Stat. Chapter 236 establishing deadlines for final action on preliminary and final plats, has held that the failure of the local legislative body to take final action disapproving of the plat within the time set by the statute constitutes an approval of the plat. *See State ex rel. Lozoff v. Board of Trustees of Village of Hartland*, 55 Wis. 2d 64, 72, 197 N.W.2d 798 (1972); *State ex rel James L. Callan, Inc. v. Barg*, 3 Wis. 2d 486, 493-494 89 N.W.2d 267 (1958). This same reasoning applies to the deadline in § 236.34(1m)(f) for taking final action on a certified survey map.

Excluding the day of submission of WoodSpring's CSM, March 21, 2017, the 90-day deadline in Wis. Stat. § 236.34(1m)(f) expired on June 19, 2017. Thus, WoodSpring's CSM was deemed approved on June 19, 2017 and any action by the Common Council after that date cannot reverse this approval.

Because WoodSpring's project has already been unduly delayed, we request that you add the required certification to WoodSpring's CSM on or before July 7, 2017.

We note for the record that Section 119-5, Milwaukee Code of Ordinances, does not seem to include a deadline for action on a certified survey map. If the intent of the ordinance was to have the deadline in section 119-5-4.c. for action on a final plat (60 days from introduction of the Common Council file) also apply to final certified survey map, the Council also failed to act on WoodSpring's final CSM within this deadline. File No. 170030 was introduced on April 18, 2017. The 60-day deadline in the Ordinance expired on June 17, 2017.

WoodSpring has the right under the purchase contract to submit this demand under Wis. Stat. § 236.34(1m)(f) on WisDOT's behalf.

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Thank you for your attention to this matter.

Very truly yours,

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

A handwritten signature in black ink that reads "S. Todd Farris". The signature is written in a cursive style with a large, prominent "S" at the beginning.

S. Todd Farris
stf@ffsj.com

STF/sjf

cc: Mr. Gregg C. Hagopian, Assistant City Attorney – Via Email
Mr. William Fuchs, Department of Public Works – Via Email
Ms. Vanessa L. Koster, Department of City Development – Via Email
Mr. Cameron E. Smith, WisDOT Assistant General Counsel – Via Email
Ms. Stephanie Knebel, WoodSpring Suites – Via Email
Brian C. Randall, Esq. – Via Email