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August 23, 2001

Alderman Paul Henningsen, Chair
Zoning, Neighborhoods & Development
Committee of the Common Council
200 East Wells Street, Room 205
Milwaukee, WI 53202

RE: Common Council File No. 000796 - Over Concentration of Use

Dear Alderman Henningsen:

In a July 3, 2001 memorandum, we were asked to provide a legal opinion concerning the additional finding proposed for the grant of a special use by File No. 000796. That Common Council File creates a fifth finding for the grant of a special use by the Board of Zoning Appeals through an amendment to section 295-59.5.5 of the Zoning Code. The proposed new finding set forth in the draft ordinance reads as follows:

c-5. No Overconcentration of Use. Operation of the use at the proposed location will not result in a concentration of establishments of this type in the neighborhood that is so high that the concentration will substantially impair or diminish property value or public health, safety and welfare in the neighborhood.

Specifically, we were asked for an opinion as to the manner in which the required finding could be further defined in the Zoning Code and what, if any, standards could be applied to such a determination by the Board of Zoning Appeals.

Initially, we should note that the language set forth in the proposed new finding does not create any new requirements for the grant of a special use which are not already encompassed within the Zoning Code. Section 295-59-5.5-c-1. specifically addresses the

public health, safety and welfare and sec. 295-59-5.5-c-2. specifically addresses the impact of a proposed special use upon the value of other property in the neighborhood. Accordingly, it is our belief that the addition of the proposed new finding regarding the overconcentration of a type of use, at least as it is currently phrased, will have no real impact on the deliberations of the Board of Zoning Appeals or the evidence which must be presented by an applicant to support the grant of a special use.

The development of specific standards to address a concept such as the concentration of a particular use is very problematic. Given the diverse nature of the City, the level of "concentration" of a particular use in various neighborhoods which might be deemed to constitute an "overconcentration" could vary substantially. For example, along North Water Street the location of a bar or nightclub every 100 feet is probably not an overconcentration, the location of similar facilities 500 or 1,000 feet apart in other neighborhoods of the City could very well be deemed to constitute an overconcentration. It may be more appropriate for the Common Council to consider alternative means to address the concerns which gave rise to Common Council File No. 000796 rather than attempt to create comprehensive standards for evaluating overconcentration.

Traditionally, our Zoning Code has addressed specific concentration of use concerns through the vehicle of spacing requirements. For example, sec. 295-14-9 of the Zoning Code requires adult premises to be located at least 500 feet from residentially-zoned districts and at least 1,000 feet from each other. Section 295-112-2-h. of the Zoning Code requires bed & breakfast facilities to be located at least 600 feet from each other.

In apparent recognition of the distinction between various neighborhoods in the City, sec. 295-14-11-b. of the Zoning Code specifically provides for the relaxation of the 600 foot requirement for bed & breakfasts in an area bounded by West Juneau Avenue, West Michigan Street, North 27th Street, and North 35th Street because that area has been specifically designated as a bed & breakfast district and a greater concentration of bed & breakfast facilities is encouraged.

It may be that, to the extent concentrations of particular types of uses are deemed to create problems which should be addressed by the Zoning Code, the inclusion of specific spacing requirements in the ordinances would be a more viable approach to such regulation.

Another manner in which the City could address such concerns would be through the creation of specific Comprehensive Plan elements to address various specific uses in various parts of the City. Such an effort was recently undertaken with respect to transmission towers through the adoption of a Transmission Tower Policy Statement by the City's Plan Commission. The adoption of such Comprehensive Plan elements would then automatically be incorporated into the Board of Zoning Appeals consideration of applications for special uses

inasmuch as sec. 295-5.5-c-4. requires special uses to be designed, located, and operated in a manner consistent with the City's Comprehensive Plan.


Significantly, the adoption of new elements as part of the City's Comprehensive Plan could also aid in the creation of requirements tailored to meet the specific needs of various neighborhoods and areas within the City. In considering the overall impact of a particular use in different parts of the City, the Plan Commission might then be able to distinguish between the level of concentration for a particular use which would be appropriate on the City's far northwest side and the level of concentration which might be appropriate on the City's near southside or downtown.

In summary, inasmuch as the new finding proposed in Common Council File No. 000796 is already encompassed by the existing findings which the Board of Zoning Appeals is required to make in order to grant a special use, we do not believe that the adoption of that file would result in any significant change with respect to the grant of individual special uses.

It would be our pleasure to work with you and members of the Zoning, Neighborhoods and Development Committee in exploring potential alternatives to File No. 000796, such as the creation of specific spacing requirements within the Zoning Code or the initiation of a request to the City's Planning Staff to undertake the preparation of specific Comprehensive Plan elements which could address the appropriate concentration of particular uses as part of the comprehensive plan.

Very truly yours,


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1033-2001-2020

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