

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
ADAM B. STEPHENS
MARY L. SCHANNING
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

STUART S. MUKAMAL
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
GREGG C. HAGOPIAN
ELLEN H. TANGEN
JAY A. UNORA
KATHRYN Z. BLOCK
KEVIN P. SULLIVAN
THOMAS D. MILLER
ROBIN A. PEDERSON
JEREMY R. MCKENZIE
PETER J. BLOCK
NICHOLAS P. DESIATO
JOANNA FRACZEK
JENNY YUAN
KAIL J. DECKER
ALLISON N. FLANAGAN
LA KEISHA W. BUTLER
PATRICK J. LEIGL
HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
NAOMI E. GEHLING
CALVIN V. FERMIN
BENJAMIN J. ROOVERS
ELLENY B. CHRISTOPOULOU
RACHEL S. KENNEDY
TYRONE M. ST. JUNIOR
HANNAH R. JAHN
Assistant City Attorneys

June 29, 2017

VIA: EMAIL TRANSMITTAL

S. Todd Farris
Friebert, Finerty & St. John, S.C.
STF@ffsj.com

Cameron Smith
WI Dept. of Transportation
Cameron.smith@dot.wi.gov

**Re: FFSJ June 27, 2017 letter; 1701 W. Layton; CSM with dedication & Council File
170030; Barnard vacation & Council File 161477**

Dear Todd and Cameron:

Todd's June 27, 2017 letter to City Clerk Owczarski was referred to me. In that letter, FFSJ asserts that WoodSpring has the right under the purchase contract with DOT to make the demand of the City that WoodSpring makes under Wis. Stat. 236.34 (1m)(f).

Please provide purchase and sale agreement. In the past, on several occasions, I asked to be provided with a copy of the purchase and sale agreement between WoodSpring and DOT. I made that inquiry of each of you Todd and Cameron. I have not been provided with a copy. Kindly provide it to me as soon as possible, including any counteroffers and amendments. If DOT asserts the contract is not subject to open records disclosure, kindly let me know that as soon as possible.

Demand. Regarding the demand, Todd's June 27th letter cites 236.34 (1m)(f) and the 90-day time limit therein. FFSJ makes demand of the City Clerk to certify that the Council failed to act within the 90 days. FFSJ asserts that the period was not extended by agreement. FFSJ asserts that the CSM is by law deemed approved. We respectfully disagree.

Time limit was extended by agreement. The time periods in Wis. Stat. Ch. 236 were extended by agreement. Please see **attached**, the "Final CSM Application" regarding this matter and note that the "Agreement for Extension of Time" was signed and agreed to. Specifically, the subdivider stated "*As the subdivider, I grant the City of Milwaukee an extension to this requirement and time extension, if necessary, in order for the attached Final Plat to be reviewed and approved by the City.*"

S. Todd Farris
Cameron Smith
June 29, 2017
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Thus, a fundamental premise of the FFSJ June 27, 2017 letter is not correct. There was an extension of time agreed to. The CSM is not deemed approved as a matter of law.

Council did act. There is another incorrect fundamental premise in FFSJ's June 27, 2017 letter. The letter presumes that the Council failed to act. That is not so.

Attached is a print-out from the City's website about Council File 170030. The Council did act. There were several hearings before the ZND committee and there was final action taken by the Council to place on file, and reject, the CSM and dedication. See, also, Todd Farris' letters to ZND committee chair Jim Bohl dated May 18 and June 6, 2017 and Todd Farris' June 15, 2017 letter to the City Clerk. Moreover, FFSJ representatives were at the committee hearings, and at the City Plan Commission hearing, and, I think, at the Council hearing on June 20, 2017.

Thus, you are aware, and have actual notice and knowledge that, not only did the Council act, but the Council rejected the CSM. As you know, one reason articulated for rejecting the CSM was that the CSM that was officially part of file 170030 had contemplated and presumed (falsely) that Barnard Avenue would be vacated. Barnard Avenue right-of-way was not vacated (Council file 161477). See also Todd Farris' June 15, 2017 letter to the City Clerk where FFSJ stated that the "reason offered" at ZND on June 13 to not approve the CSM in File 170030 "was that the CSM is inaccurate because Lot 2 of the proposed CSM does not show a small strip of West Barnard Avenue that is in the City's records as being public right-of-way...."

You now also have this letter as further written documentation of the Council's acting and of the Council reason for rejection of the CSM in File 170030.

Barnard Avenue right-of-way was not vacated. An FFSJ representative was also at the special public works committee on June 20, 2017 regarding vacation of Barnard Avenue, and, I think, at the Council hearing that followed that committee hearing that day. See Brian Randall's June 16, 2017 letter to Public Works Committee Chair Mark Borkowski. You are aware, and have actual notice and knowledge that, the Council did not vacate Barnard Avenue. See **attached** printout from City website about Council file 161477.

FFSJ attempt to submit a revised CSM. Todd, by your June 15, 2017 letter to the City Clerk, FFSJ attempted to submit "a second" CSM to the Council within File 170030 in an attempt to show retained "as right-of-way the strip of unimproved West Barnard Avenue" that was not vacated. However, that second CSM:

- was not an original
- had never been submitted to or reviewed by DCD or DPW (or the City Engineer)
- was not stamped as having been reviewed and approved by DCD and DPW
- was not signed by the City Treasurer.

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Accordingly, the second CSM was not properly submitted for processing, and it was not properly before the Council. See MCO Ch. 119, including MCO 119-4, 119-5, 119-6, 119-7, 119-8, and 119-15. Before the Council in File 170030 was the first CSM (premised on Barnard having been vacated) that the Council chose to reject.

Please contact DCD if you would like to pursue the approval of the second CSM. When a subdivider applies for CSM approval, DCD assigns a DCD number to the CSM unique to the Council file to which it relates, and then the CSM goes through the DCD and DPW review process. See MCO Ch. 119, including MCO 119-4, 119-5, and 119-15. If you would like to have the second CSM be considered for approval, please contact DCD and follow the MCO Ch. 119 process.

Thank you. Please call if you have questions or comments. My direct line is 414-286-2620.

Sincerely,



GREGG HAGOPIAN
Assistant City Attorney

GCH/kdb
Attachment

cc: Jim Owczarski, City Clerk
Kyle Gast, DCD
Vanessa Koster, DCD
Bill Fuchs, DPW
Yance Marti, DPW
Terry Witkowski, Alderman



FINAL CERTIFIED SURVEY MAP APPLICATION

Date: 11/14/16 Quarter Section: 20 Ald. District: 13

Address(es) of subject parcel(s): 1701 Layton Avenue

Reason for Division or Combination: Establish new lots

Owner(s)' Name: Wisconsin Department of Transportation

Address: 4802 Sheboygan Avenue, Room 501, Madison, WI 53707

Telephone: 608-266-2572

Email (REQUIRED to receive recorded copy of CSM): mark.krouse@wi.dot.gov

Owner(s)' Representative/Buyer(s)/Other Contact Name: WoodSpring Hotels c/o Stephanie Knebel

Address: 8621 E 21st Street N, Suite 200, Wichita, Kansas 67206

Telephone: 316-631-1331 Email (REQUIRED): sknebel@woodspring.com

Surveyor's Name: Chaput Land Surveyors

Address: 234 W. Florida St. Milwaukee, WI

Telephone: 414-292-1311 Email (REQUIRED): ddon@chaputlandsurveys.com

FEES:	AMOUNT:	PAYABLE TO:
ENGINEER REVIEW	\$ 380.00	City of Milwaukee Treasurer
APPLICATION	\$ 230.00	City of Milwaukee Treasurer (may combine engineer & application fees into 1 check)
RECORDING	\$30.00	Milwaukee Co. Register of Deeds

AGREEMENT FOR EXTENSION OF TIME

Chp. 236.11(2) The body or bodies having authority to approve plats shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons supplied the subdivider. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority which has failed to act. As the subdivider, I grant the City of Milwaukee an extension to this requirement and time extension, if necessary, in order for the attached Final Plat to be reviewed and approved by the City.

Stephanie Knebel
Signature of Subdivider/ Applicant

11/18/2016
Date

PLEASE FILL OUT TO THE BEST OF YOUR KNOWLEDGE:

Results	Projected
New jobs	5
Retained jobs	0
New housing units	0
New commercial and/or industrial space (SF)	12,500
Renovated commercial and/or industrial space	0
Private investment	\$ 3,600,000

Return completed application and fees to: **Dept. of City Development, Planning Administration**
809 N. Broadway, 2nd floor
Milwaukee, WI 53202
(414) 286-5654
<http://city.milwaukee.gov/PlanningPermits>



Legislation Details (With Text)

File #: 170030 **Version:** 0

Type: Resolution **Status:** Placed On File

File created: 4/18/2017 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 6/20/2017

Effective date:

Title: Resolution approving a final Certified Survey Map for land located on the south side of West Layton Avenue and east 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.

Sponsors: THE CHAIR

Indexes:

Attachments: 1. Certified Survey Map-Unexecuted.pdf, 2. FFSJ SC Legal Counsel Letter (dated 6-6-17).pdf, 3. FFSJ SC Legal Counsel Letter (dated 5-18-17), 4. City Plan Commission Letter, 5. Hearing Notice List, 6. Map Exhibit (from FFSJ SC), 7. FFSJ SC Legal Counsel Letter (dated 6-15-17), 8. Second Certified Survey Map (shows unimproved Barnard Ave)

Date	Ver.	Action By	Action	Result	Tally
4/18/2017	0	COMMON COUNCIL	ASSIGNED TO		
4/19/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	REFERRED TO		
5/15/2017	0	CITY PLAN COMMISSION	RECOMMENDED FOR PLACING ON FILE AND ASSIGNED TO	Pass	5:0
5/17/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/17/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/19/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/19/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/23/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
6/8/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/8/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/8/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/8/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/9/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/9/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/9/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		

6/13/2017	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PLACING ON FILE	Pass	5:0
6/20/2017	0	COMMON COUNCIL	PLACED ON FILE	Pass	13:0

170030
ORIGINAL

THE CHAIR

Resolution approving a final Certified Survey Map for land located on the south side of West Layton Avenue and east 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.

This resolution approves a final Certified Survey Map that divides a portion of one parcel into two parcels to create a site for new development and dedicates land for public street purposes to reflect existing conditions.

Whereas, The Milwaukee Code of Ordinances, Chapter 119-5, Subdivision Regulations, requires City Plan Commission ("CPC") approval, conditional approval or disapproval of all Certified Survey Maps ("CSMs"), which provide dedication of land to the City of Milwaukee ("City") for public purposes; and

Whereas, The City received one final CSM, a copy of which is attached to this Common Council File, which dedicates land to the City for public purposes; and

Whereas, In compliance with the above-referenced chapter of the Milwaukee Code of Ordinances, CPC has reviewed and recommended approval of said CSM; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the following CSM is approved:

Owner: Wisconsin Department of Transportation
DCD No.: 3104
Tax Key No.: 624-9994-113
DCD:Kyle.Gast:kcg
04/18/17/A

Clerical Correction 05/18/17 Chris Lee



Legislation Details (With Text)

File #: 161477 **Version:** 1
Type: Resolution **Status:** Placed On File
File created: 2/7/2017 **In control:** COMMON COUNCIL
On agenda: **Final action:** 6/20/2017
Effective date:

Title: Substitute resolution to vacate the unimproved portion of West Barnard Avenue from a point east of South 20th Street east to its terminus, in the 13th Aldermanic District.

Sponsors: THE CHAIR

Indexes:

Attachments: 1. City Plan Commission Letter, 2. 161477 Exhibit A.pdf, 3. 161477 Map and Aerial View.pdf, 4. 6-16-17 BCR ltr to Ald. Borkowski (unimproved Barnard Ave. vacation petition)

Date	Ver.	Action By	Action	Result	Tally
2/7/2017	0	COMMON COUNCIL	ASSIGNED TO		
2/8/2017	0	PUBLIC WORKS COMMITTEE	REFERRED TO		
4/10/2017	0	CITY PLAN COMMISSION	RECOMMENDED FOR ADOPTION AND ASSIGNED	Pass	6:0
6/20/2017	1	COMMON COUNCIL	PLACED ON FILE	Pass	13:0
6/20/2017	1	PUBLIC WORKS COMMITTEE	RECOMMENDED FOR PLACING ON FILE	Pass	4:0

161477
SUBSTITUTE 1

THE CHAIR

Substitute resolution to vacate the unimproved portion of West Barnard Avenue from a point east of South 20th Street east to its terminus, in the 13th Aldermanic District. This substitute resolution vacates the above public right-of-way in accordance with vacation proceedings under power granted to the City of Milwaukee by Section 62.73, Wisconsin Statutes, and Section 308-28, Milwaukee Code of Ordinances. This vacation was requested by the City of Milwaukee Department of Public Works to reflect existing conditions.

Whereas, It is proposed that the unimproved portion of West Barnard Avenue from a point east of South 20th Street east to its terminus be vacated pursuant to the provisions of Section 62.73, Wisconsin Statutes; and

Whereas, The Department of Public Works has been directed to prepare a coordinated report estimating all costs and benefit assessments that will be incurred with said vacation; and

Whereas, That as provided by Sections 62.73(1) and 840.11, Wisconsin Statutes, a lis pendens must be filed with the Milwaukee County Register of Deeds; and

Whereas, Said vacation has been reviewed in accordance with Section 308-28, Milwaukee Code of Ordinances; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that said public right-of-way as indicated by Exhibit A and bound and described by:

All that part of West Barnard Avenue, in the Northeast 1/4 of Section 30, Township 6 North, Range 22 East, as originally acquired for the opening, widening and extending of West Barnard Avenue by Warranty Deed recorded as Document No. 3501579 on June 20, 1956, lying westerly of a line described as follows: Commencing at the point of intersection of the west line of said 1/4 Section and the westerly extension of the south line of West Barnard Avenue; thence North 89°57'21" East, along said south line and its extension, 180.00 feet to a point; thence North 00°08'32" East, parallel to said west line, 60.00 to a point in the north line of West Barnard Avenue; thence North 89°57'21" East, along said north line, 78.46 feet to the beginning of the line to be described; thence South 76° 10'05" East, 125.09 feet to the terminus of said line is vacated; and, be it

Further Resolved, That a notice of pendency of said vacation has been recorded at the Milwaukee County Register of Deeds and the Commissioner of the Department of City Development may request a release of the lis pendens without Common Council action if said vacation is not approved; and, be it

Further Resolved, That the Commissioner of Public Works and/or the City Engineer are authorized to implement the actions listed in the coordinated report relating to said vacation and when a money deposit is required, it must be deposited prior to implementing said actions; and, be it

Further Resolved, That as provided by Sections 62.73(1) and 66.1005(2), Wisconsin Statutes, said vacation shall not terminate the easements and rights incidental thereto acquired by or belonging to any county, town, village or city, or to any utility or person in any underground structures, improvements or services, as enumerated or otherwise existing in said description of land above-described, both easements and rights and all rights of entrance, maintenance, construction and repair with reference thereto shall continue as if said unimproved portion of public right-of-way had not been vacated; and, be it

Further Resolved, That the proper City officials, including the Commissioner of Public Works, are authorized to sign any easements or other documents necessary to assert the City of Milwaukee's rights under Section 66.1005(2), Wisconsin Statutes, and cause the same to be recorded in the Milwaukee County Register of Deeds Office.

DCD:Kyle.Gast:kcg
05/10/17