

From: [Owczarski, Jim](#)
To: [Lee, Chris](#)
Subject: FW: Sufficiency of petition for CCFN 190159
Date: Tuesday, July 09, 2019 5:40:52 PM

For the file.

That's that then.

Jim

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From: Larsen, Nicole
Sent: Tuesday, July 09, 2019 5:06 PM
To: Owczarski, Jim; Schanning, Mary; Connelly, Kristin D.
Cc: Stephens, Adam
Subject: Sufficiency of petition for CCFN 190159

Good afternoon,

I have been asked to review the protest petition filed with respect to the proposed change in zoning from a Single Family Residential district, RS2, to a Detailed Planned Development, Common Council File #190159. There are two main questions that need to be addressed:

- 1) Is the City's ordinance authorizing protest petitions, MCO § 295-307-5, valid, in light of the repeal of the state statute authorizing the same?
- 2) If MCO § 295-307-5 is valid, is the petition submitted by Mr. Winter duly signed and acknowledged, as is required by the ordinance?

First, 2017 Wisconsin Act 243 repealed the statutory protest provision, which was found in Wis. Act. § 62.23(7)(d)2m.a. The City of Milwaukee adopted its own protest provision, MCO 295-307-5, which mirrored the language of the statutory provision. Despite the repeal of the state law, the ordinance remains in effect. The statute did not prohibit local control over protest provisions, it merely repealed the state authorization for the same. The City's protest provision remains valid and intact.

The second question is whether the petition submitted by Bruce Winter is duly signed and acknowledged, as required by MCO § 295-307-5. The language of the ordinance reads as follows:

PROTEST OF MAP AMENDMENT. In case of a protest against a map amendment, duly signed and acknowledged by the owners of 20% or more of the areas of the land included

in the proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of the opposite land, the amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the common council voting on the proposed change.

Similar questions have arisen before, and this office has considered the question on what constitutes “duly signed and acknowledged” in the context of a protest petition. In an opinion from 1976 this office opined that “acknowledgment is a particular form of notarization which is fully discussed in Section 706.07 of the Wisconsin Statutes. Opinion to Richard G. Lynne, August 19, 1976. State statute defines “Acknowledgement” as “a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.” Wis. Stat. § 706.07(1)(a). In a March 13, 1992 opinion, we opined that the signature of each protestor must be “Acknowledged” in the manner set forth in Wis. Stat. § 706.07(1)(a). In 1994 we updated that opinion and considered whether each signature had to be notarized, or if all signatures within the petition could be “acknowledged” through the inclusion of a circulator’s affidavit. Opinion to Ronald D. Leonhardt, April 29, 1994. We opined that a petition where each signature is acknowledged is valid, so too is a petition that has been acknowledged before the person who circulated the petition. *Id.* We recommended including an affidavit of the person circulating the petition stating that the affiant circulated the petition and personally obtained each of the signatures, that the affiant knows that the signers are owners of properties listed on the petition, that they signed with full knowledge of its contents and that the affiant is aware that falsifying the affidavit is punishable under Wis. Stat. § 946.32(1)(a).

Our 1994 opinion conforms with an unpublished court of appeals opinion issued later that same year. In *Greatwood Log Homes, Inc. v. Town Bd. of Town of Rhine*, 188 Wis. 2d 604, 526 N.W.2d 280 (Ct. App. 1994), the Court held that a declaration that the protestors signed the document, a declaration of the purpose of the document, and the circulator’s notarized affidavit together satisfied the statutory components of an acknowledgement.

Here, we only have a 10-page petition¹, which lacks any sort of affidavit by the circulator. It fails to even identify the circulator. None of the protestors signatures individually notarized. Wis. Stat. 706.07(8) even provides examples of acknowledgments. However, no acknowledgment was made. As such, the petition is insufficient.

There are only three categories of property owners who may sign the protest petition:

1. Owners of 20% or more of the areas of the land included in the proposed change,
2. Owners of 20% or more of the land immediately adjacent extending 100 feet therefrom,
or
3. Owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of the opposite land.

We have no way of knowing from this petition which category the signatories purport to represent.

We considered a similar petition in 2004 and determined the petition to be invalid in part for this reason. Opinion to the Committee on Zoning, Neighborhoods, and Development, June 29, 2004. Similarly, this petition is also invalid.

I hope this information is helpful to you. Please do not hesitate to contact me with any further questions.

1. Note that there are two separate petitions submitted: the first opposes the rezoning, the second is a request to require Western Building Products to construct a berm and other items.

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