

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
Assistant City Attorneys

November 7, 2007

To the Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall

Re: CCFN 070964 – Protest Petitions Filed With Respect to a
“Substitute resolution permitting a minor modification to
the Detailed Planned Development known as Downer Avenue
Redevelopment, Phase 1, on land located on the Southeast
corner of East Bellevue Place and North Downer Avenue,
in the 3rd Aldermanic District”

Dear Council Members:

The opinion of this office has been requested as to the validity of various protest petitions filed by neighboring property owners to the above-referenced redevelopment project. There is pending before the Common Council a resolution entitled “Legislative File 070964” approving minor modifications to this redevelopment project, which have been submitted in accordance with the provisions of § 295-907-2-i, Milwaukee Code of Ordinances (“MCO”). Your inquiry concerns whether the protest petition procedure specified in Wis. Stat. § 62.23(7)(d)2m.a. and § 295-307-5, MCO applies to the type of “minor modification” encompassed by the pending resolution. We conclude that it does not.

The above-referenced statutory provision permits a protest against amendments “to an existing zoning ordinance” as specified in Wis. Stat. § 62.23(7)(d)2. Although this phrase might possibly be construed to apply to both text and map amendments, the clear intent of the statute is to apply the protest procedure only to map amendments, because a protest petition is signed only by those property owners located in close proximity to land affected by a proposed ordinance amendment. Conceptually, this makes sense only with respect to amendments that affect particular parcels or zoning districts as opposed to those with city-wide applicability. This approach is reflected in the Zoning Code, ch. 295, MCO,

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which contains a counterpart protest-petition procedure applicable to map amendments (§ 295-307-5, MCO), but contains no such procedure as applied to text amendments.

Nonetheless, it is apparent that the concept of a protest petition would not be applicable to a "minor modification" of a detailed planned development as provided in § 295-907-2-i, MCO. Such a "minor modification" is accomplished by resolution, not by ordinance, as exemplified in the present case. Furthermore, it does not constitute a rezoning or a change of zoning classification; its impact is limited to relatively small revisions to previously approved general and detailed planned developments of a nature that will not change their "general character" or otherwise significantly modify the basic features of the previously approved plans. Consequently, such "minor modifications" do not fall within the scope of previously referenced statutory and ordinance provisions pertaining to protests of amendatory zoning ordinances.

We therefore conclude that the protest petitions that have been filed against the above-referenced "minor modification" to the detailed planned development in question are not valid because the proposed resolution that would approve such "minor modifications" cannot be made the subject of a protest petition. If you have any further questions, please do not hesitate to contact this office.

Very truly yours,


GRANT F. LANGLEY
City Attorney


STUART S. MUKAMAL
Assistant City Attorney

SSM:lmb
c: Ronald D. Leonhardt
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