

CITY OF MILWAUKEE

Form CA-43

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July 12, 2002

To the Honorable Committee on
Zoning, Neighborhoods & Development
of the Common Council
Room 205 - City Hall

Re: CCFN 020237 - Protest Petition (Rezoning of 6900 West Florist Avenue,
Tax Key/Account No. 154-9957-322-2)

Dear Committee Members:

This office has been requested to review the protest petition filed with respect to a proposed rezoning of the above-referenced property from IL1 (Industrial-Light) to RT2 (Two-Family Residential), denoted as Common Council File No. 020237. We have reviewed the petition and advise that while it is generally in the proper form, two of the five signatures affixed thereto are not properly acknowledged and are therefore invalid.

The general form of the petition is appropriate and references the appropriate statutory and ordinance sections, specifically, § 62.23(7)(d)2m., Wis. Stats., and §§ 295-61 (existing Zoning Code) and 295-307.5 (new Zoning Code) of the Milwaukee Code of Ordinances. The first three signatures affixed to the petition, being the signatures of individuals, are valid and appropriately acknowledged. That is not the case, however, with respect to the last two signatures, which are of individuals purporting to represent entities in a representative capacity. These include the following signatures: (1) the signature of James Smith as owner of an entity known as the "Vincent Company," 7240 West Douglas Avenue; and (2) the signature of Mr. Kevin Schuele as Managing Director of an entity known as "WFA LLC," 6101 North 64th Street.

The problem with these signatures is that the form of acknowledgement utilized by the notary official attempting to acknowledge these signatures was the same as that utilized with respect to individuals signing in an individual capacity. This is not the appropriate form prescribed by the statutes. An acknowledgement of a signature of one who signs in a representative capacity must be in a form that explicitly sets forth the fact that the signature is being made and witnessed in a representative capacity and that sets forth the title or capacity of the individual

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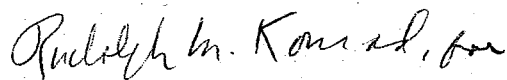
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and the name of the entity represented. See § 706.07(8)(b), Wis. Stats., which prescribes the appropriate form of acknowledgement to be utilized in such circumstances. Neither that form nor any comparable form of acknowledgement was utilized in this instance. Accordingly, those signatures are invalid.

Whether this issue affects the validity of this protest petition for purposes of triggering the three-fourths-vote requirement set forth by § 62.23(7)(d)2m., Wis. Stats., is uncertain. That would depend upon whether the three remaining (and valid) signatures affixed thereto still represent 20% or more "of the area of land immediately adjacent to and extending 100 feet from the property" affected (6900 West Florist Avenue). We have also not verified the following items: (1) whether the property addresses noted on the petition are in fact within 100 feet of this property; and (2) whether the individuals who have signed the protest petition are in fact the owners of record of the properties indicated beneath their signatures. We would suggest that these items be verified by the appropriate City departments and/or officials possessing such information.

If you have any further questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,



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