

CITY OF MILWAUKEE



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January 30, 2006

Mr. Rocky Marcoux
Commissioner
Department of City Development
809 Building - 2nd Floor

REFERRED
BY MARCOUX
TO KOSTER
DATE 1-30-06
 ACTION
 INFORMATION

COPIES TO: _____
GREEN STREET
BROWN

Re: Twelfth Amendment to Park Place General Planned Development
Common Council File No. 051111
Requirement for Approval of Property Owners Located Within
the Area of the Development

Dear Commissioner Marcoux:

This letter will respond to the request for the opinion of this office concerning whether the approval of existing property owners located within the zoning district denoted as the "Park Place General Planned Development" must consent to a plan amendment (denoted as the "12th Amendment to the General Plan for a General Planned Development (GPD) Known as Park Place" prior to referral of this Amendment to the Zoning, Neighborhoods and Development Committee of the Common Council and (ultimately) to the full Common Council for their consideration. Based upon the facts provided to us, our answer to this inquiry is "no."

A planned development occupies the legal status of a zoning district, and is thus subject to procedures set forth in Wis. Stat. § 62.23 and implementing City ordinance provisions applicable to the establishment and amendment of zoning districts. As Park Place is a "Planned Development District," which was duly established in 1981, the applicable implementing City ordinance provision is § 295-907, Milwaukee Code of Ordinances ("MCO"). Furthermore, because a planned development constitutes part of the City's

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official (zoning) map, and is created via an amendment to the zoning map (*see* § 295-907-2-d, MCO) those portions of Wis. Stat. § 62.23 as well as pertinent City ordinance provisions pertaining to zoning map amendment procedures (*i.e.*, § 295-307-2 and -3, MCO) are also applicable to consideration of this "12th Amendment."

Our examination of these statutory and ordinance provisions reveals nothing that would require a vote of, or the approval of, property owners located within the existing boundaries of the planned development comprising "Park Place" as a precondition for approval of this "12th Amendment." The provisions of Wis. Stat. § 62.23 applicable to establishment and amendment of zoning districts and the City's "official map," *i.e.*, Wis. Stat. §§ 62.23(6)(c), (6)(g), (7)(b), and (7)(d) make no reference or suggestion to any requirement that a vote be conducted among, or that approval be secured from, neighboring property owners, save only for the third sentence of Wis. Stat. § 62.23(7)(b), which states in pertinent part, that: "The council may with the consent of the owners establish special districts, to be called planned development districts. . . .," and which applies only to the original establishment of such a district and not to amendments to an existing district. While these statutory provisions do mandate the conduct of hearings before the City Plan Commission, and the Common Council, and also include the "protest petition" provisions embodied in Wis. Stat. § 62.23(7)(d)2m.a., (which changes the threshold for Common Council approval of a rezoning amendment from a majority to a 75% supermajority), none require either that a vote be conducted among neighboring property owners or that their approval be obtained as a precondition to any amendment of a zoning district or a zoning map.

Similarly, the implementing City ordinances (§§ 295-307-2 and -3 and 295-907, MCO) contain no reference to, or suggestion of the existence of, any such requirement. The ordinance provisions setting forth procedures for amendments of the City's official (zoning) map, §§ 295-307-2 and -3 set forth detailed procedures for initiation and consideration of map amendments including methods by which such amendments may be initiated (*i.e.*, by application, petition, or action of the Common Council) and for consideration of duly initiated amendments including hearings before the City Plan Commission, and before the Zoning, Neighborhoods and Development Committee of the Common Council, and final consideration by the Common Council. The ordinance also includes a "protest petition" procedure applicable to map amendments (§ 295-307-5, MCO), which parallels Wis. Stat. § 62.23(7)(d)2m.a., discussed above.

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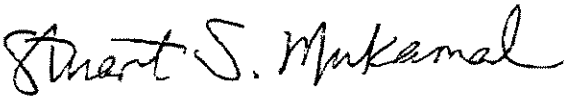
The ordinance governing "Planned Development Districts," § 295-907, MCO, includes detailed provisions respecting the establishment of such districts and approval by resolution of "minor modifications" thereto (§ 295-907-2-I through i-7, MCO), as well as a requirement that the establishment of such a district must include an amendment of the official (zoning) map of the City to show the district and its boundaries (§ 295-907-2-g and -2-h, MCO). Again, there is no reference therein to any requirement that a vote be conducted among neighboring property owners, or that their approval be obtained, as a precondition for any amendment to such a district.

We also are mindful of your statement in your letter that the first 11 amendments to the Park Place Planned Development District have not implicated any requirement that any of those amendments be submitted to other property owners located within this district for approval. Based on our inquiry into the pertinent statutes and ordinance provisions, discussed above, we see no basis for proceeding any differently with the pending "12th Amendment." If you have any further questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,



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SSM:lmb

1050-2006-293:101354

