



October 24, 2022

VIA E-MAIL

Ald. Michael J. Murphy
Chair, Zoning, Neighborhoods & Development Committee
City of Milwaukee Common Council
200 East Wells Street
Milwaukee, WI 53202

Re: A Substitute Ordinance Relating to the Change in Zoning from General Planned Development, GPD, to a Detailed Planned Development, DPD, Known as Block 3-Arena Master Plan, Phase 1, for Development of a Music Venue and Associated Elements on a Portion of 1001 North Vel R. Phillips Avenue

File No. 220490

Dear Ald. Murphy:

We represent Marquee Ventures MKE, LLC and its affiliated entity FPC Live LLC in connection with the application to change the site zoning to Detailed Planned Development.

We are in receipt of a memorandum dated October 20, 2022 submitted by “Save MKE’s Music Scene LLC.” Although it is unsigned, we note that the Save group entity is registered to Craig Peterson of River Hills, and we understand that Attorney John Wirth has represented the Save group. We are forwarding a copy of this letter directly to both individuals as well as the Zoning, Neighborhoods & Development Committee members and key City staff as indicated below (all by separate emails via bcc for open meetings compliance purposes).

The two allegations of procedural deficiencies are without merit for the reasons set forth below.

The Certified Survey Map is Properly before the Common Council, not the Plan Commission

Under Sec. 119-5-1-b., MCO, the Common Council is solely responsible for the approval of all certified survey maps. Only when a certified survey map provides dedication of land to the City for public purpose does the Plan Commission have any recommending role for a CSM. The Common Council previously vacated both Highland Boulevard and 5th Street so there is no dedication on the CSM. The Plan Commission has no role in reviewing such CSM.

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The GPD-DPD Process is Specifically Designed to Regulate Redevelopment Such as This

The entire Arena District was rezoned years ago as a General Planned Development (GPD) which is the City's form-based zoning classification. The purpose of a GPD is to allow for master planning of larger areas where the specific details of development may not yet be known, or not yet feasible. As with form-based zoning principles, the GPD establishes the guidelines, direction, and limitations for the future development.

The GPD includes 8 development blocks and various stages of development have occurred since its inception typically following the same amendment process to establish a DPD. The design and DPD review and approval process inherently incorporates siting the buildings and uses and shaping them within the GPD standards.

The Bradley Center formerly occupied Block 2 and all of Block 3, essentially a "super block," which was divided into two blocks by the GPD. Abutting West State Street and North Vel R. Phillips Avenue, this DPD amendment pertains to the uses and design for Lot 1, Outlot 1, and Outlot 2 in Block 3. All of the plans submitted for this DPD amendment are within the boundaries of Block 3.

Equally, if not more important, as the fact that the DPD amendment boundary parameters have at all times strictly followed the Block 3 boundaries, is the fact that a music venue is classified under the zoning code as a theater, which is a *permitted use* in the GPD. The issues before the committee are thus technical in nature and do not relate to a discretionary determination such as a use classification.

The Plans are Substantially Similar and Directly Responsive to the Plan Commission's Action

While the DPD follows the boundaries of Block 3, the footprint of the music venue shifted to the east and a small, spec building previously considered for a separate lot has been eliminated from the plans. However, the reason for the shift was very much before the Plan Commission and was part of the discussion whether it be from the points advanced by City staff, various public speakers, or the appointed citizen Plan Commissioners.

Specifically, it was clear from the Plan Commission discussion that there were concerns about whether the small spec building would, in fact, be built, as well as when and what it will look like including details such as its height and setback. Ultimately, the Plan Commission added the following approval condition following substantial discussion:

That the applicant propose additional interim treatments and/or enhanced wall designs for the eastern façade of the concert venue (via the DPD) and the vacant land on Lot 2 adjacent to Vel Phillips Avenue (via the GPD).

The plans before the committee specifically address the Plan Commission's condition and comments from the Commissioners, City staff, and the local Alderman from the district. Rather than trying to design interim elements for the façade of the theater building and features for the vacant lot until the spec building is constructed, the design team identified that by sliding the

theater building to replace the spec building, the original intent of the GPD will be preserved by not needing a minimum height deviation or setback relief.

Further, by shifting the theater building to the east, a more functional and appropriate area was created on the west side of the theater building for loading and staging of tour buses, semis, and venue service vehicles. While the west side of the lot will still accommodate public pedestrian and emergency vehicle access rights¹ in the same Outlot 1 footprint as previously planned, the loading and staging area will be better accommodated on Lot 1 with the shift.

The Common Council is Authorized to Approve the DPD

The City's GPD-DPD process is designed to accommodate responsive adjustments to plans and shifts in the overall plans while not opening the door to a completely different use or building type to suddenly appear. Developments commonly incorporate revisions from City staff and the appointed Plan Commission as they proceed through the City's review and approval process without having to start over.

The legal basis for this process is rooted in both the Wisconsin Statutes and the City of Milwaukee Code of Ordinances.

While the Save group's memorandum only cited to Wis. Stat. Sec. 62.23(5) which, in fact, does require matters such as this to be referred to the Plan Commission for "its consideration and report," it is important to note that the "**final action** is taken by the council." (emphasis supplied). More important, we also cite to Wis. Stat. Sec. 62.23(7)(am) which expressly grants only to the Common Council the power to regulate and restrict zoning by ordinance. It is the Common Council that is authorized to adopt amendments to an existing zoning ordinance (such as this DPD). *See* Sec. 62.23(7)(d)2.

This same legal procedure is also set forth in the City's zoning code. Under Sec. 295-307-3, MCO, the map amendment process starts and ends with the Common Council. In between, the zoning amendment is referred to the Plan Commission for it to prepare a report of its findings and recommendations. *See* Sec. 295-307-3-b and -d. However, the Zoning, Neighborhoods & Development Committee is also required to hold a class 2 public hearing after posting public notice and sending notice to property owners within 200 feet. *See* Sec. 295-307-3-e.²

Only the Common Council has the authority to approve or disapprove a map amendment and only the Council has the express authorization to "refer the amendment back to the zoning, neighborhoods and development committee for additional consideration." Sec. 295-307-3-f, MCO.

Finally, support for the Zoning, Neighborhoods & Development Committee acting on the DPD amendment is rooted in the Planned Development District zoning ordinance subchapter (Sec. 295-

¹ Pursuant to an easement to be granted by separate Common Council file if the DPD amendment is approved.

² The public notice by the City also included the timely online posting of all of the DPD plans submitted for review by the committee. *See* [File No. 220490](#).

907, MCO). Assuming, *arguendo*, that this were an already approved DPD, the Common Council has the express authority by resolution to approve modifications to approved detailed plans which are consistent with the spirit and intent of the GPD or a previously approved DPD. *See* Sec. 295-907-2-h, MCO. While the minor modification procedure cannot be used for a substantial relocation of a principal structure, an increase to the land coverage of building or parking areas, an increase of the gross floor area of buildings, or to reduce the amount of approved open space, landscaping, or screening, among other standards (*see id.*), none of those factors apply here.

In fact, the opposite is true. The GPD height and setback standards are preserved and no open space or landscaping is eliminated (to the contrary, it is provided in the two plaza locations); decreases in both building floor area and lot coverage area actually occurred with the elimination of the spec building; and sliding the theater building to the east but remaining within the existing boundaries of Block 3 does not reasonably constitute a “substantial relocation” where the GPD for Block 3 has always required a building at that location along and North Vel R. Phillips Avenue.

Conclusion

On behalf of the development team, we truly appreciate the City’s thorough review of this development and the careful consideration of this attractively designed and permitted use theater building in the vibrant entertainment district that is poised for growth.

Very truly yours,

Davis & Kuelthau, s.c.



Brian C. Randall

BCR:kmh

cc: President Pérez & Alds. Stamper, Dimitrijevic and Bauman (committee members by bcc)
Mr. Chis Lee, Committee Clerk
S. Todd Farris, Deputy City Attorney
Mr. Sam Leichtling, Planning Manager
Mr. Craig J. Peterson
John M. Wirth, Esq.
Mr. Joel Plant
Mr. Lee Christensen
Mr. Greg Uhen / Mr. Mark Lewandowski
Mr. Peter Feigin /Mr. Michael Belot
Bruce T. Block, Esq. /Lucas N. Roe, Esq.
Katherine M. Hampel, Esq.