

**RECONSIDERATION OF DOWNER and BELLEVIEW  
PARKING STRUCTURE**

The Zoning, Neighborhood, and Development Committee should not ratify its earlier approval of the Downer and Belleview parking structure. That earlier approval was the product of what has been judicially determined to have been a fraudulent process.

The Committee should not be thinking that ratification of the earlier fraud will somehow protect the city from financial liability. The pending lawsuit does not seek any financial damages. Rather, the lawsuit only asks that the court enter a writ directing the city to follow the law.

Much misinformation and outright falsifications have been disseminated about the controversy and lawsuit relating to the construction of the parking structure at Downer and Belleview.

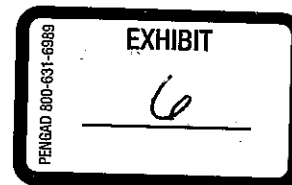
The judge hearing the lawsuit stated in her January <sup>16</sup> 2008 decision that the city had provided false information to the Zoning, Neighborhood, and Development Committee and had ignored the state statute relating to good faith negotiation with the State Historical Society in its efforts to win approval for the parking structure project:

... aspects of the city's handling of the development of the formerly city-owned parking lot at issue raises serious questions about the transparency of the process and the failure to comply with state law.

Transcript of Judge's January 11, 2008 decision, p.4, ln 7-10.

But I cannot imagine how any rational person, much less municipal officials presumably more skilled in this area than ordinary people, could fail to note that the scale, the height, the character, and the proximity of the proposed parking structure would affect the Civic property, a red brick colonial, and the historic district.

Transcript of Judge's January 11, 2008 decision, p. 5, ln. 21-25, p. 6, ln 1.



... Sections 66.1111 and 44.62 of the Wisconsin Statutes required good-faith negotiation between the city and the State Historic Preservation Officer

This did not take place.

Not only did the city fail to notify the State Historical Society, even after Mr. Chip Brown, the Third, wrote to the city, advising the city of its obligation under state law, the city ignored the letter.

Transcript of Judge's January 11, 2008 decision, p.7, ln 17-25.

... I am troubled and discouraged that the city simply ignored what is nevertheless its statutory obligation to protect historic districts, properties, and the public trust. Our state's largest city is where we should look to for civic lessons in statutory compliance, not noncompliance.

Transcript of Judge's January 11, 2008 decision, p.8, ln 1 -6.

... the representations made to the Zoning and Neighborhood Commission regarding the historic Preservation Subcommittee are disturbing.

I have considered that public bodies most likely would not be shocked to discover that not all persons who come before them are truthful. . . .

The problem here has to do with the fact that the information regarding the position of the Historic Preservation Subcommittee came from a city staff person whose word the Zoning and Neighborhood Commission was entitled to rely on and did rely on.

Transcript of Judge's January 11, 2008 decision, p. 12, ln. 21-25, p. 13, ln 1, 4-8.

The judge goes on to compare the process employed by the city to the tactics used by "totalitarian states." Transcript of Judge's January 11, 2008 decision, p. 15, ln. 18.

The misinformation campaign of the city has continued even after the judge's January 11 public chastisement of the city tactics. At a recent special meeting of the Historic Preservation Commission, the city and the developers provided the Commission with diagrams of the project that falsely represented who were the adjacent neighbors to the parking structure. The City then claimed that one of the neighbors who was falsely represented to be an adjacent neighbor had approved of one aspect of the project. But even that neighbor has informed the Commission that she did not give the approval that the city claimed she had.

Misrepresentations were also made to the Commission about how and where snow would be removed from the open fifth level of the parking structure.

In deciding what to do on February 14, 2008, the Zoning, Neighborhood, and Development Committee should not ratify the bad conduct of the past. The Committee should stand on principle and do the right thing. This Committee should provide the civic lesson and example that the judge expected from the state's largest city.

The Committee should consider not just the short term interests of the developer. The Committee should consider its state statutory mandate with regard to the preservation of the state and federal historic residential district that is adjacent to the project.

The parking structure should not be finally approved at this time. There are still unresolved issues relating to the immediately adjacent historic property to the east. An easement allowing access to the rear yard needs to be provided to the owners of that property so that garbage and recycling carts do not need to be stored in the front yard of that residence. Changes also need to be made so that the snow from the fifth level of the parking structure is not dumped onto the west wall of that adjacent historic home.

The Committee should also be aware that, despite assertions of a city official, the neighbors who are concerned about the parking structure project have never sponsored or even considered a boycott of the Downer Avenue merchants. In reality, the neighbors are more concerned about the welfare of the street level retail merchants than the developer appears to be. With the exception of the Hollander project which was largely funded by the tenant, the developers immediate interest appears to be generating rental income from medical tenants.

The Committee should also be aware that the developer's decision this summer to remove the basement parking level from the Downer and Belleview structure was not part of any agreement or compromise with the neighbors. In testimony before the judge, the developer admitted that he made that change unilaterally and without any agreement or assent by the neighbors. (This change substantially benefitted the developer by reducing his cost of construction as he did not have to incur excavation expenses or expenses related to the construction of an underground facility.)

It is also interesting that the developer admitted in his testimony that it would be better for his medical office tenants to have parking adjacent to those medical offices rather than across the street and down the block in the Downer and Belleview parking structure.

Modifications and adjustments need to be made before the Committee gives final approval to this project.

Respectfully submitted on February 14, 2008.

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January 16, 2008

Honorable Lisa Lamelas  
Judge of the Circuit Court  
Circuit Court of Milwaukee County

Dear Judge Lamelas:

Since I testified in your court last week, I have learned that:

1. The original general plan development for the Downer redevelopment project which was submitted in December 2006 specified that the parking structure at Downer and Bellevue would only be three stories high (which was the maximum height allowed under the earlier Request for Proposals) and would provide 94-100 parking spaces.
2. On Monday January 14, 2008, the parking lot developers presented a revised proposal for the west side of Downer, including a hotel and condominium complex, and the addition of town houses at Webster and Stowell.
3. In his testimony on Friday, developer Joe Lee stated that he needed a certain number of parking spaces for the clients and staff of the new medical offices but that those spaces did not have to be provided in the parking structure at Downer and Bellevue. He conceded that if parking would be provided closer to those offices by expanding the parking available at Webster and Stowell, the parking would be more convenient for the patients and staff of the medical offices. This change could thereby shift parking spaces from the current Downer/Bellevue location to the Webster/Stowell location.
4. The residential owners near the Downer and Bellevue parking structure are willing to accept the existing foot print of the structure that is now being built as long as the height of the structure is limited to three stories with no parking on the roof. Rather the residential owners prefer a "green roof" on the structure.

- 5 The developer appears able to accommodate the preferences of the residential owners as expressed in 5 above.
- 6 The residential owners are not now proposing that the parking structure be relocated within the historic district boundary.

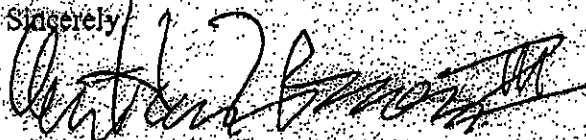
I believe that negotiation with the City (per Wis. Stat § 44.42 and 66.1111) including discussion of the above issues may have resulted in a plan that met the needs of the City, the developer, the residential owners and the State Historical Society; particularly such a plan would substantially ameliorate the initially proposed adverse effects to the historic district beyond what is proposed currently.

I remain willing and available to negotiate this parking lot development plan with the City, and look forward to the opportunity to do so.

If you wish, I am available to provide testimony today by telephone after 2:00 p.m.

Thank you very much for your consideration.

Sincerely,



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# Judge scolds city over project

## Panel met in secret for Downer parking

By MARIE ROHDE  
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Milwaukee County Circuit Judge Elsa Lamelas took the City of Milwaukee to the woodshed Wednesday, comparing its handling of neighborhood concerns over the construction of a five-story parking structure on N. Downer Ave. to that of a totalitarian state.

After a day and a half of testimony, Lamelas chastised the city, noting that a subcommittee of the Historic Preservation Commission likely violated the state open meetings law by conducting business secretly and that minutes of its meetings had been "scrubbed" to eliminate some of the matters that were discussed. The city also failed to negotiate with the Wisconsin Historical Society as required by state law she found.

"Not only did the city conduct these meetings in closed session, it then took it upon itself to record meetings incompletely," Lamelas said. "When one of the commissioners objected over the omission of certain material covered during one of these meetings and attempted to supplement the record, the request was ignored. City staff did not trouble itself to inform the commissioner that the record would not be supplemented."

Lamelas told the city that the Zoning, Neighborhood and Development Committee had to meet again and listen to what any member of the public has to say about the development. She also told the committee to make a public confession of its sins, particularly on

# METRO

From page 1

## DOWNER

# Judge chastises city

failing to negotiate with the state and the secret meetings.

The garage is being constructed as part of a \$55 million redevelopment that includes an 11-story hotel-condo project on N. Stowell Ave., street landscaping improvements and renovation of the commercial buildings on Downer Ave.

On Oct. 31, three homeowners who live in an east side historic district adjacent to where the garage is being constructed filed a lawsuit seeking an injunction to stop the garage's construction, citing procedural errors made by the city during approval.

One of the homeowners, Peter Kovac, testified that he had suggested the garage be relocated slightly, taking his backyard. In exchange, he said, he would get a side yard with a tree now owned by the city. That was the discussion that occurred in secret and what was scrubbed from the minutes, according to testimony.

Although the homeowners did not initially file a complaint over the secret meeting, Lamelas all but

instructed them how to do so in her ruling. Joseph Cincotta, the homeowners' lawyer, said he would file a complaint.

## Homeowners weigh in

The homeowners would not say what they want from the city at this point, but earlier they said they would accept a three-story garage and not demand that the garage be torn down if the city also agreed to give Kovac the tree on the city land adjacent to his home.

Lamelas declined to issue the injunction that would stop the garage construction — it appears nearly complete — but noted that if the homeowners prevail, a remedy could prove costly. A hearing will be held later.