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May 18, 2017

VIA E-MAIL

Chairman James A. Bohl and Members of the
Zoning, Neighborhoods & Development Committee
City Hall – Room 205
200 East Wells Street
Milwaukee, WI 53202

ROBERT H. FRIEBERT
(1938–2013)

EMERITUS
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OF COUNSEL
THOMAS W. ST. JOHN

RE: Zoning, Neighborhoods & Development Committee May 23, 2017 Agenda/Item 6, File No. 170030, Resolution approving a final Certified Survey Map for land located on the south side of West Layton Avenue and west of South 20th Street to divide a portion of one parcel into two parcels and to dedicate land for public street purposes, in the 13th Aldermanic District

Dear Chairman Bohl and Members of the
Zoning, Neighborhoods & Development Committee:

This firm represents WoodSpring Suites Milwaukee Airport LLC (“WoodSpring”), the developer of a new extended stay hotel on property located at 1701 West Layton Avenue in the 13th Aldermanic District. A hotel is a permitted use in the zoning district for the site. The development site is along Interstate 94/41 and depicted as Lot 1 of the Certified Survey Map (“CSM”) that is before you as Item 6 on the Committee’s May 23, 2017 Agenda.

By way of background, the real estate included in the CSM is currently owned by the Wisconsin Department of Transportation (“WisDOT”) and WisDOT is the signing party on the CSM. After concluding that the real estate is no longer needed for highway purposes, WisDOT offered the excess right-of-way for sale beginning in 2013, and in January, 2016 WisDOT and WoodSpring executed a Real Estate Sale and Purchase Contract for the property comprising Lots 1 and 2 of the CSM.

The proposed CSM is the product of a cooperative effort between the City of Milwaukee (Bill Fuchs of DPW and Assistant City Attorney Gregg Hagopian), WisDOT, WoodSpring and Chaput Land Surveys. This process spanned several months and great care was taken to ensure that the CSM complied with all of the technical requirements in Chapter 119, Milwaukee Code of Ordinances (“Ordinances”) and was consistent with the City’s land use planning documents for the property. The CSM includes dedications of rights-of-way for a portion of the existing South 20th Street and the on-ramp turn lane as required by the City.

The final CSM was duly signed by WisDOT and submitted to the City for approval. Everyone involved naturally thought that the CSM would be approved with little fanfare. Because the CSM includes the existing right-of-way dedications, the CSM was first referred to the City Plan

Chairman James A. Bohl and Members of the
Zoning, Neighborhoods & Development Committee
May 18, 2017
Page 2

Commission. The matter was considered by the Plan Commission at its May 15, 2017 meeting. DCD recommended approval with one condition—the approval of the City’s petition to vacate an unimproved portion of West Barnard Street, Common Council File No. 161477, which abuts the southern boundary of Lot 2 of the Proposed CSM.* District Alderman Terry Witkowski appeared at the meeting and objected to the CSM.

Surprisingly, following the Alderman’s comments, the Plan Commission disregarded staff’s recommendation to approve and voted unanimously to recommend denial of the CSM for reasons that are not clear to us—something about the CSM not dividing the excess WisDOT right-of-way in an orderly fashion.

This brings us to the purpose of this letter. We strongly believe that the Plan Commission erred. There is no valid legal basis for not approving the CSM. It fully complies with all of the technical requirements in Chapter 119, Ordinances and Wis. Stat. Ch. 236. In addition, the CSM is fully consistent with the City’s land use planning documents for the property. Under these circumstances, the City does not have the discretion to reject the CSM. *See, e.g., State ex rel. Columbia Corp. v. Town Bd. of Town of Pacific*, 92 Wis. 2d 767, 776-79, 286 N.W.2d 130 (Ct. App. 1979).

Based upon the above, we urge the Committee to recommend that the Common Council approve the proposed CSM and that the Common Council so approve the CSM at its May 31, 2017 meeting.

Thank you for your consideration in this matter.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.



S. Todd Farris
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STF/sjf

cc: Alderman Terry Witkowski – Via Email
Mr. Jim Owczarski, City Clerk – Via Email
Gregg Hagopian, Esq. – Via Email
Cameron E. Smith, Esq. – Via Email

* The street vacation involves unimproved right-of-way and was unanimously recommended for approval by the Plan Commission at its April 10, 2017 meeting and is awaiting scheduling before the Public Works Committee.