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January 6, 2022

Mr. Lafayette Crump
Commissioner of City Development
809 North Broadway, 2nd Floor
Milwaukee, WI 53202

Re: Applicability of Wis. Stat. 66.10015

Dear Commissioner Crump:

On December 17, 2021, your department requested an opinion from this office regarding whether an application to an Architectural Review Board ("ARB") for a Certificate of Appropriateness ("COA") would be considered an "application for the first approval required for the project" described in Wis. Stat. § 66.10015(2)(b). As detailed below, after reviewing the applicable Wisconsin law, it is our conclusion that an application for a COA submitted to an ARB is an "application for the first approval required for the project" under § 66.10015 such that the regulations in place at the time of the submission of the application to the ARB apply to the remainder of the project.

From conversations with your staff, we understand that the question has arisen based on the proposed construction of a new indoor concert venue by Frank Productions ("Developer") on land owned by Milwaukee World Festivals, Inc. in the Third Ward. We further understand that the property is currently zoned IM, which would allow the Developer to construct the project by right. The property also sits within the boundaries of the Business Improvement District No. 2 which is subject to the jurisdiction of the Third Ward ARB. Under MCO 200-61-5, before a building permit may be issued to a project under the jurisdiction of an ARB, a property owner must apply for and receive a COA from the ARB. As part of its approval process, the Third Ward ARB maintains a standard application form. On December 10, 2021, the Third Ward ARB received a completed application from the Developer along with various attachments. On December 14, 2021, Alderman Bauman introduced a Common Council file which would direct the Department of City Development ("DCD") to initiate a rezoning of the property.

Wis. Stat. § 66.10015 provides, in relevant part:

(1) Definitions. In this section:



(a) "Approval" means a permit or authorization for building, zoning, driveway, storm water, or other activity related to a project.

...

(b) "Existing requirements" means regulations, ordinances, rules, or other properly adopted requirements of a political subdivision that are in effect at the time the application for an approval is submitted to the political subdivision.

...

(c) "Political subdivision" means a city, village, town, or county.

(d) "Project" means a specific and identifiable land development that occurs on defined and adjacent parcels of land, which includes lands separated by roads, waterways, and easements.

(2) USE OF EXISTING REQUIREMENTS.

(a) Except as provided under par. (b) or s. 66.0401, if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political subdivision agree otherwise. An application is filed under this section on the date that the political subdivision receives the application.

(b) If a project requires more than one approval or approvals from one or more political subdivisions and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise.

(c) An application for an approval shall expire not less than 60 days after filing if all of the following apply:

1. The application does not comply with form and content requirements.

2. Not more than 10 working days after filing, the political subdivision provides the applicant with written notice of the noncompliance. The notice shall specify the nature of the noncompliance and the date on which the application will expire if the noncompliance is not remedied.
3. The applicant fails to remedy the noncompliance before the date provided in the notice.

The statute was adopted in December 2013 in an effort to provide clarity to which municipal regulations apply to a development project. It does this by freezing “local regulation relating to the land development, as applied to a specific project, at the time that the person proposing the project first applies for a local approval for the project.”¹ If a project requires approvals from multiple municipalities or multiple approvals from one municipality, the freeze begins with the first application.

The questions presented in this matter are (1) whether an application to an ARB for a COA is an application for an “approval” for a “project” as that term is defined in Wis. Stat. § 66.10015(2); and (2) whether the materials submitted on December 10, 2021 by the Developer with its application for a COA from the Third Ward ARB identified the full scope of the project. We are of the opinion that the answers to these questions are yes such that the requirements applicable to the proposed development are those in existence on December 10, 2021.²

As defined in Wis. Stat. § 66.10015 “approval” means “a permit for authorization for building, zoning, driveway, storm water, or other activity related to a project.” “Project” is defined as “a specific and identifiable land development that occurs on defined and adjacent parcels of land.” Generally speaking, all new construction in the City of Milwaukee requires the Department of Neighborhood Services to issue a building permit authorizing construction activity to take place, which would clearly be an approval under § 66.10015. In this case, based on the location of the proposed development in BID No. 2 City ordinance requires the issuance of a COA prior to the issuance of a building permit. The COA, as a prerequisite to the City’s issuance of a building permit, then also is a permit for the authorization for building and is an “approval” under § 66.10015. The Developer’s proposed concert venue is also a “project” under the statute. The Developer

¹ Wisconsin Legislative Council Act Memo, 2013 Wisconsin Act 74.

² We have previously provided your Department with informal guidance on a similar issue related to the applicability of §66.10015 to a BOZA application. This opinion is consistent with our prior analysis.

Mr. Lafayette Crump
Commissioner of City Development
January 6, 2022
Page 4

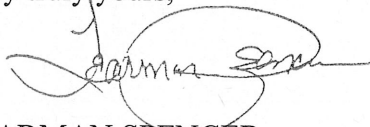
has identified the parcels of land on which it wishes to construct the venue. Similarly, the Developer as demonstrated via its submission to the Third Ward ARB, has clearly identified what it wishes to develop on the parcels.

As noted above, to assist its approval process, the Third Ward ARB has developed a standard application form which must be completed and submitted before the Third Ward ARB will consider issuing a COA for a proposed project. The Developer submitted its completed application and supporting materials on December 10, 2021. These materials provide the full scope of the proposed project including the site plan, design drawings of the various levels of the venue, and exterior renderings of the proposed building elevations.

In conclusion, the Developer submitted its application for a COA to the Third Ward ARB on December 10, 2021, identifying the full scope of the proposed project. We are of the opinion that that under Wis. Stat. §66.10015, this ARB application represents the filing of the first application for the first approval required for the project. The ARB application is an approval under the statute because it is an authorization for building related to a project. As a result, the "existing requirements" in place as of December 10, 2021 govern the balance of the City approvals for the project. Any proposed zoning change to the property would not take effect until after December 10, 2021, and therefore would not apply to the project.

Please advise if you have any additional questions.

Very truly yours,



TEARMAN SPENCER
City Attorney



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