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July 14, 2006

Rocky Marcoux
Commissioner
Department of City Development
809 Building – 2nd Floor

Re: CCFN 050633 (Brewer's Hill/Harambee Neighborhood
Conservation Overlay District)—“Vested Rights”

REFERRED
BY MARCOUX
TO KOSTER
DATE 7-24-06
 ACTION
 INFORMATION

COPIES TO:
GREEN STREET
BROWN

Dear Commissioner Marcoux:

On June 23, 2006, you inquired of this office as to whether Common Council File No. 050633, a proposed ordinance that would create the “Brewer’s Hill and Harambee Neighborhood Conservation Overlay Zone” and approve a neighborhood conservation plan and development and design standards for the area within the boundaries of that Zone, might be effected by rights of property owners within the affected area that may have vested prior to the adoption of this File. Specifically, your question concerns whether applicants for building permits and land divisions located within the boundaries of the proposed Zone would be required to comply with the development and design standards contained in this File. We are pleased to respond to your request.

Overlay zones are created and regulated by subch. 10 of the City of Milwaukee Zoning Code (“Code”), §§ 295-1001 – 295-1017, Milwaukee Code of Ordinances (“MCO”). Specifically, a neighborhood conversation overlay zone (denoted by the Code as “NC”) may be established in accordance with the provisions and procedures set forth in § 295-1003, MCO. Thus, the Code governs the method by which such districts are established, as well as the applicability of their terms and conditions to particular individuals.

Your inquiry raises the issue of “vesting.” This item is governed by § 295-125, MCO, a provision of subch. 1 of the Code, which states as follows:

295-125. Vesting. Rights to a permit shall vest in applicants for approvals whose applications conform in all respects with zoning and building code requirements in effect at the time of the application. No applicant for a permit requiring discretionary approval can obtain a vested right. If construction or use is abandoned, the use shall no longer be permitted and a new permit conforming with this chapter shall be

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required. The applicant shall bear the burden of providing evidence that construction has commenced prior to permit expiration.

Given the applicability of the above provisions, we may draw the following conclusions:


- (1) Applicants for building, occupancy, land division, and other permits affecting properties located within the proposed overlay zone would enjoy vested rights to those permits without regard to the proposed development and design standards that might apply to other properties located within the confines of that zone if: (a) their permit applications are complete as of the effective date of the overlay zone's actual establishment; and (b) those permit applications conform in all other respects with Code and City building code requirements in effect as of that date;
- (2) Such "vested rights" would not apply under either of the following circumstances: (a) if the permit would require a "discretionary approval" from the Board of Zoning Appeals, such as a variance or a special-use permit; or (b) the property owner has not commenced construction or other applicable land-use activity upon the property to which a permit applies on or before any expiration date for commencement of such activity as specified by the permit itself, or has otherwise "abandoned" the permit.

If you have any further questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,



GRANT F. HANGLEY
City Attorney



STUART S. MUKAMAL
Assistant City Attorney

SSM:lmb
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