

**MAISTELMAN & ASSOCIATES, LLC**

**Attorneys at Law**

Michael S. Maistelman \*

Matthew D. Lerner

*Linda for file*

September 18, 2006

**TIME SENSITIVE MATERIAL**

Via Hand-Delivered

Chairman Michael S. D'Amato  
Zoning, Neighborhood & Development Committee  
City Hall, Room 205  
200 East Wells Street  
Milwaukee, WI 53202-3570

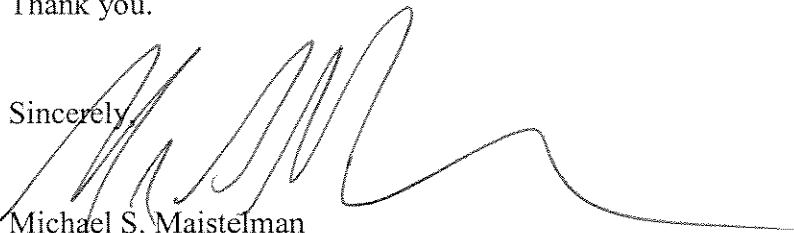
Re: ZND File# 050633 – Ordinance creating the Brewers Hill/Harambee Neighborhood Conservation Overlay Zone and approving the neighborhood conservation plan and development and design standards for this area, in the 6<sup>th</sup> Aldermanic District

Dear Chairman D'Amato:

Attached please find a letter from my client Lightray Development, LLC, regarding the above-referenced matter which is scheduled to be heard tomorrow morning.

Thank you.

Sincerely,

  
Michael S. Maistelman

Enclosures

MSM/am

C:

Vice Chair Willie C. Wade (Via hand-delivered w/enc.)  
Alderman Robert J. Bauman (Via hand-delivered w/enc.)  
Alderman Michael J. Murphy (Via hand-delivered w/enc.)  
Alderman Ashanti Hamilton (Via hand-delivered w/enc.)  
Ms. Vanessa Koster (Via hand-delivered w/enc)

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3127 W. Wisconsin Avenue ♦ Milwaukee, WI 53208-3957

**Telephone:** 414.908.4254 **Facsimile:** 414.271.1884

\*Also licensed in Massachusetts - Court Commissioner

# Lightray Development, LLC

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September 18, 2006

Zoning, Neighborhood & Development Committee  
City Hall, Room 205  
200 East Wells Street  
Milwaukee, WI 53202-3570

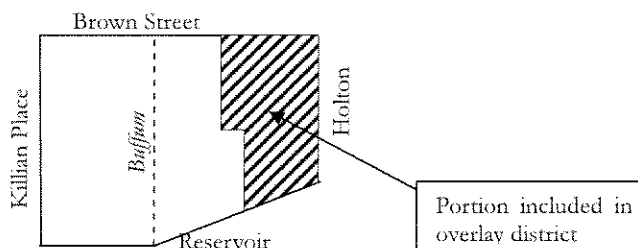
**HAND DELIVERED**

Attention: Honorable Michael S. D'Amato  
Chairman

Subject: ZND File# 050633 -- Brewers Hill/Harambee Neighborhood Conservation Overlay Zone

Dear Chairman D'Amato:

We own properties located at the south-eastern boundary of the above-referenced proposed overlay district. Our property is bordered by Killian Place, Brown Street, Holton Street, and Reservoir Avenue as shown below. Only the small eastern ½ block is included in the overlay district.



We believe that including the small ½ block section in the south-eastern corner of the proposed overlay district:

1. undermines the current direction and development precedence of the area
2. is inconsistent with the purpose and intent of overlay districts in general, and
3. is illogically and confusingly drawn

We commend Alderman McGee for his desire to protect the historic nature of the Brewers Hill and Harambee communities. We acknowledge that an overlay district is a useful tool to preserve the historic character of neighborhoods.

In this small ½ block area, however, the character is one of condominiums and a busy commercial thoroughfare. Forcing the overlay district restrictions onto this area would, in fact, result in development inconsistent with this small part of the community. It is therefore inconsistent with the intent of the ordinance.

There are currently several condominiums along E. Reservoir Avenue and N. Killian Place that take advantage of the magnificent views overlooking the City and the Milwaukee River. (There are also taller structures east of Holton Street – across the street from the proposed district – that were also built to enjoy the wonderful southern views.) Under the current overlay district, any project similar to the same condominiums and tall structures already in the neighborhood would be prohibited.

The proposed overlay district would prevent additional positive developments in the south-eastern corner of the community which includes the bluff overlooking our magnificent City and the Milwaukee River.

The small section of property included in the proposed boundary borders Holton Street, a busy commercial street, and is at the north end of the Holton Street Bridge. The proposed conservation district would require construction inconsistent with this developing area and busy street.

Conservation districts, in general, are intended to preserve the character of neighborhoods. Including the small ½ block along Holton street does the opposite: it would incorrectly restrict development that is consistent with the area.

When looking at the proposed overlay map, the south-eastern boundary seems to be inconsistently and confusingly drawn to extend south – and then back north. We believe the boundary makes more sense to stop at Brown Street as its southern edge from Holton to Palmer Streets.

**We respectfully request that the proposed overlay district boundary not include the eastern ½ block of our properties, and instead end at Brown street as its southern border from Holton to Palmer.**

We appreciate your consideration of our request and welcome the opportunity to answer questions or provide more information.

Thank you for your consideration.

Sincerely,

LIGHRAY DEVELOPMENT, LLC

A handwritten signature in cursive script, appearing to read "Daniel Eder".

Daniel Eder

Enclosures

Copies: Vice Chair Willie C. Wade (hand-delivered w/enc.)  
Alderman Robert J. Bauman (hand-delivered w/enc.)  
Alderman Michael J. Murphy (hand-delivered w/enc.)  
Alderman Ashanti Hamilton (hand-delivered w/enc.)



Alderman Michael D'Amato

August 17, 2006

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On the other hand, the Code limits the amount that may be expended to restore a deteriorated or damaged legal, non-conforming use, whether a "non-conforming special use," "non-conforming prohibited use occupying a structure," or "non-conforming structure." Generally, this limitation is expressed either in terms of a "reconstruction ratio" (specifying that the costs of restoration may not exceed 50% of the costs of duplicating the entire pre-existing structure) or as a straight limitation of 50% of the assessed value of the affected property. Expenditures in excess of those maximums is prohibited. Thus, if a legal, non-conforming structure is razed or destroyed by fire, it may not be rebuilt in reliance upon maintenance of its legal, non-conforming status if the costs of rebuilding would exceed those maximum limits (as they inevitably would), a rebuilt structure would therefore be considered "new construction" subject to the requirements applicable to all new construction within the Brewers Hill/Harambee Neighborhood Conservation Overlay Zone. See for a general discussion of this topic, *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 31-39, 498 N.W.2d 842, 850-853 (1983); *Hillis v. Village of Fox Point Board of Appeals*, 2005 WI App 106, 281 Wis. 2d 147, 699 N.W.2d 636.

If you have any further questions concerning this matter, please contact this office for guidance.

Very truly yours,



GRANT E. LANGLEY  
City Attorney



STUART S. MUKAMAL  
Assistant City Attorney

SSM:lmb  
c: Ronald D. Leonhardt, City Clerk  
1033-2006-2223:108700