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September 14, 2016

Ald. James Bohl, Chair  
Zoning, Neighborhoods & Development Committee  
Room 205 – City Hall

Re: Proposed Ordinance relating to BOZA Findings with  
Respect to Special Use Permit Applications

Dear Ald. Bohl:

This letter will transmit for your Committee's consideration and approval a proposed ordinance pertaining to the role that the City's various area comprehensive plans may play with respect to consideration of special use permit applications by the Board of Zoning Appeals (the "Board"). Specifically, the proposed ordinance repeals the requirement of consistency as between such applications and area comprehensive plans, and creates a provision permitting the Board to consider in its discretion the provisions of an area comprehensive plan in conjunction with its determination of such applications as a matter of discretion.

Adoption of this ordinance is necessary in order to conform the Zoning Code ("Code") with the requirements of 2015 Wis. Act 391, which became effective as of April 28, 2016, and most particularly, Sec. 17 thereof. That provision reads as follows:

**SECTION 17.** 66.1001(2m)(b) of the statutes is created to read:

~~66.1001(2m)(b)~~ A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan.

The terms "conditional use permit" and "special use permit" are used interchangeably and mean the same thing: zoning with respect to uses that are presumptively permitted but subject to case-by-case review by the appropriate zoning tribunal. See Rathkopf's *The Law of Zoning and Planning*, Vol. 3 § 61.9, p.



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61-20 at n. 6 (2005 ed.); *Hearst-Argyle Stations, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2003 WI App 48, 260 Wis. 2d 494, 659 N.W.2d 424.

In our opinion, this provisions renders current § 295-311-2-d-4 of the Code unenforceable. Since, on its face, new Wis. Stat. § 66.1001(2m)(b) uniformly affects all political subdivisions within the State, it is preemptive of any local ordinances to the contrary, which would include § 295-311-2-d-4 of the Code. *Black v. City of Milwaukee*, 2016 WI 47, 369 Wis. 2d 272, \_\_ N.W.2d \_\_; *Madison Teachers Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337.

While the City of Milwaukee, along with all other political subdivisions within the State of Wisconsin, may no longer require determinations of zoning tribunals with respect to special use permit applications to conform with applicable comprehensive plans, State law does not prohibit such tribunals from considering such plans as evidence, along with other evidence of record, in making such determinations. Accordingly, we have included proposed new § 295-311-2-j to be added to the Code, which would permit the Board to do so.

We will be pleased to respond to any inquiries concerning this matter and appreciate your consideration.

Very truly yours,

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SSM:lmb  
enclosure  
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