



## Legislation Text

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**File #:** 080308, **Version:** 0

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080308  
ORIGINAL

ALD. BAUMAN

Resolution appropriating funds from the Outside Counsel/Expert Witness Fund Special Purpose Account for the purpose of retaining outside legal counsel in a case involving the Board of Zoning Appeals.

This resolution appropriates \$10,000 from the Outside Counsel/Expert Witness Fund Special Purpose Account for the purpose of paying outside legal counsel (Attorney Alan Marcuvitz) to represent the City and the public interest by opposing the request of Kashmir Multani to the Board of Zoning Appeals for a use variance to allow continued operation of a gas station at 1530 W. State Street (BOZA Case No. 28710), and in any other appeals to the Board to allow continued operation of this gas station.

Whereas, In 1995, when the operator of the existing gas station located at 1530 W. State Street sought permission from the City to construct a fuel pump canopy, the Board of Zoning Appeals approved a special use permit for a period of 10 years to allow a gas station on the premises (a gas station was a special use under the zoning in effect at that time); and

Whereas, This special use permit was not renewed upon its expiration on April 5, 2005; and

Whereas, On November 14, 2006, the Common Council approved File Number 060733, an ordinance that changed the zoning of this property from LB2 (Local Business) to RT4 (Two-Family Residential); and

Whereas, Under RT4 zoning, a gas station is a prohibited use; and

Whereas, Because its special use permit was not renewed before the 2006 zoning change, the gas station at 1530 W. State Street lacks nonconforming special use status; and

Whereas, On February 15, 2007, the Board of Zoning Appeals denied a request from Bulk Petroleum Corp. for a use variance that would allow the existing gas station structure to be razed and a new gas station/convenience store to be constructed on the site; and

Whereas, The current lessee of the gas station, Kashmir Multani, has applied to the Board of Zoning Appeals for a use variance to continue occupancy of the premises as a filling station (BOZA Case No. 28710); and

Whereas, On May 22, 2008, the Board of Zoning Appeals adjourned Case No. 28710 for the purpose of collecting additional information from the petitioner and from City staff; and

Whereas, In a February 8, 2008, letter to Commissioner of Neighborhood Services Martin Collins, the City Attorney's Office indicated that, in its opinion, the pending use-variance application acts as a stay

of enforcement of an order issued by the Department of Neighborhood Services placarding and ordering closure of the gas station; and

Whereas, Over the past several years, the neighborhood surrounding the gas station at 1530 W. State Street has become increasingly residential, with the gas station becoming more and more out of character with the neighborhood; and

Whereas, The 2006 rezoning of several blocks in this area to RT4 (Two-Family Residential) formalized the goal of the City and neighborhood residents and property owners to support and expand residential uses and development in this neighborhood; and

Whereas, Because the City Attorney's Office has already provided legal representation and advice to the Board on the pending use-variance application, and has opined on this matter to the Commissioner of Neighborhood Services, the City Attorney's Office can no longer represent the City of Milwaukee as an interested party in this case; and

Whereas, Because of this conflict of interest, it is necessary for the City to hire outside legal counsel if it wishes to oppose the use-variance application of Kashmir Multani; and

Whereas, It would be in the best interest of the City in general and residents of the surrounding neighborhood in particular to retain outside experts and legal counsel to represent the public interest by arguing that operation of a gas station at 1530 W. State Street would not be beneficial to the City or its residents; and

Whereas, The Outside Counsel/Expert Witness Fund Special Purpose Account is to be used by the City Attorney's Office for the purpose of retaining experts and outside legal counsel; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney is directed to retain the services of Attorney Alan Marcuvitz to represent the City and the public interest by opposing the use variance requested in Board of Zoning Appeals Case No. 28710 and to represent the City and the public interest in any other appeals to the Board to allow continued operation of a gas station at 1530 W. State Street; and, be it

Further Resolved, That the sum of up to \$10,000 shall be reserved, appropriated and expended within the 2008 Special Purpose Account - Outside Counsel/Expert Witness Fund (006300-0001-9990-S157-2008) for retaining and engaging Attorney Alan Marcuvitz for these purposes.

LRB08302-1  
JDO  
06/09/2008