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Title: Substitute resolution appropriating funds from the Outside Counsel/Expert Witness Fund Special Purpose Account for the purpose of retaining outside legal counsel in a matter pending before the Board of Zoning Appeals.

Sponsors: ALD. BAUMAN

Indexes: BOARD OF ZONING APPEALS, CONSULTANTS, LITIGATION

Attachments: 1. Fiscal Note, 2. 2005 Payment for Outside Legal Counsel, 3. Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
12/1/2009	0	COMMON COUNCIL	ASSIGNED TO		
1/12/2010	1	CITY CLERK	DRAFT SUBMITTED		
1/26/2010	1	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
1/26/2010	1	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
1/26/2010	1	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
2/1/2010	1	JUDICIARY & LEGISLATION COMMITTEE	SUBSTITUTED	Pass	5:0
2/1/2010	2	JUDICIARY & LEGISLATION COMMITTEE	RECOMMENDED FOR ADOPTION	Pass	4:0
2/1/2010	2	CITY CLERK	DRAFT SUBMITTED		
2/9/2010	2	COMMON COUNCIL	SUBSTITUTED	Pass	15:0
2/9/2010	3	COMMON COUNCIL	ADOPTED	Pass	14:0
2/9/2010	3	CITY CLERK	DRAFT SUBMITTED		
2/18/2010	3	MAYOR	SIGNED		

091091
SUBSTITUTE 3

ALD. BAUMAN

Substitute resolution appropriating funds from the Outside Counsel/Expert Witness Fund Special Purpose Account for the purpose of retaining outside legal counsel in a matter pending before 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 counsel (Attorney Dan O'Callaghan is proposed) to represent the opposition in matters involving the request of Kashmir Multani to the Board of Zoning Appeals for a declaration of nonconforming use status or, in the alternative, for a use variance to

allow continued operation of a gas station at 1530 W. State Street (BOZA Case No. 28710). 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 zoning in effect at that time); and

Whereas, In 1997, the City adopted an ordinance as part of the zoning code which, among other matters, provided that certain site plan changes to a nonconforming special use including the expansion, enlargement or rebuilding of a canopy, would not require approval from the Board of Zoning Appeals provided that certain conditions specified in the ordinance were met; and

Whereas, The aforesaid ordinance remains in full force and effect; and

Whereas, The 1995 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, 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 located at 1530 W. State Street, Kashmir Multani, has applied to the Board of Zoning Appeals for a declaration that the gas station is not a nonconforming prohibited use 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, The Board of Zoning Appeals has requested briefs from all interested parties and has received briefs and argument from counsel for Kashmir Multani, on the issue of whether the gas station located at 1530 W. State Street is a nonconforming prohibited use; and

Whereas, By decision dated November 16, 2008, the Board of Zoning Appeals concluded that the proposed variance to operate as a filling station is not consistent with those factors that may allow for such variance, and the Board denied the variance based upon the rationale set forth in the official transcript of case No. 28710, dated November 13, 2008; and

Whereas, A temporary restraining order was stipulated before the Milwaukee Circuit Court dated November 19, 2008, in the appeal of petitioner Kashmr Multani at docket No. 08CV017121, authorizing continued operation of the filling station, and the Circuit Court, having closed the civil action on February 9, 2009, while the issues raised by the opposition to variance remain un-briefed before the Board of Zoning Appeals; and

Whereas, The appeal before the Board of Zoning Appeals was returned to the board for further proceedings that might including the briefing of issues of law and fact; and

Whereas, Over the past several years, the neighborhood surrounding the gas station at 1530 W. State Street has become increasingly residential; 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 petition of Kashmir Multani for a declaration of nonconforming prohibited use status and alternative use variance application, and has opined on this matter to the Commissioner of Neighborhood Services, the City Attorney's Office may have a conflict of interest; and

Whereas, Because of this potential conflict of interest, and in the best interest of having a full and fair hearing on this matter, it is in the best interests of the City to hire outside legal counsel to represent the opposition to the petition of Kashmir Multani for a declaration of nonconforming prohibited use status; 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 provide a full and fair hearing of all legal issues; 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 Dan O'Callaghan, subject to terms and conditions established by the City Attorney, to represent opposition in briefing issues returned to the Board of Zoning Appeals from the Milwaukee Circuit Court related to the use variance requested in Board of Zoning Appeals Case No. 28710 and to represent the opposition in any appropriate related proceeding before the Board; and, be it

Further Resolved, That, if Attorney Dan O'Callaghan declines or is otherwise unable to participate in this matter, then the City Attorney, in consultation with the Alderman representing the district in which the relevant property is located, shall seek to retain alternate counsel to fulfill the purposes of this resolution; and, be it

Further Resolved, That the sum of up to \$10,000 shall be reserved, appropriated and expended within the 2010 Special Purpose Account - Outside Counsel/Expert Witness Fund (006300-0001-1490-S157-2010).

City Attorney
SSM

LRB09472-5
RLW
2/9/2010

