

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 28, 2010

MEMORANDUM

TO: Mayor Dave Cieslewicz
All Alderpersons

FROM: Michael P. May, City Attorney
Katherine C. Noonan, Assistant City Attorney

RE: Edgewater Conditional Use Appeal
Legislative File No. 18015



As part of the proposed Edgewater development, Sec. 28.04(19), MGO, titled Waterfront Development, required the Developer to obtain conditional use approval from the Plan Commission.

On March 23, 2010, the Plan Commission approved the conditional use. Subsequently, on April 2, 2010, some neighboring property owners filed an appeal pursuant to Sec. 28.12(11)(i), MGO.

This memorandum sets out for the Council the timeline, provides our recommendation as to whether the appeal should be accepted and considered, and if it is accepted and considered by the Council, provides some guidance on how the appeal is to be considered.

Council Members should consider the issues in this memorandum carefully. Decisions made on some of the issues presented will establish precedent that the Planning Division and the Office of the City Attorney will apply to future cases. It is not simply the impact on this development that needs to be considered, but the application of any rules established in this case to future cases.

1. Notices Pursuant to Madison Ordinances.

Sec. 28.12(11)(f) requires notice to owners of property within 200 feet of the boundaries of the project. The first notice of the application of the zoning map amendment (request to rezone to a PUD GDP-SIP) and request for a conditional use (CU) for waterfront development was sent on December 3, 2009. A copy of that notice and the mailing list is attached to this memorandum as Exhibit A. Subsequently, the Developer modified the proposed development by adding land to the project and a

revised PUD-SIP was proposed. Among other things, the expanded PUD-SIP required notice to different property owners. Because the boundaries of the project had changed, the property owners noticed would not be the same as those noticed in December, 2009.

The second notice was sent on March 12, 2010, for the March 22 Plan Commission Hearing. While the first notice was sent from the City Clerk's Office, the second notice went from the City Planning Department. A copy of this notice and the mailing list are attached hereto as Exhibit B.

For all the mailing lists attached to this memorandum, we are including only that portion related to property owners. In fact, residents of the area also receive notice, but we are not including the dozens of pages addressed to "Occupant" of various locations.

2. The Appeal.

The appeal was timely filed on April 2, 2010. A copy of the appeal papers are attached hereto as Exhibit C.

Pursuant to Sec. 28.12(11)(i), MGO, the appeal must be filed by "20% or more of the property owners notified" Upon receipt of the appeal, the Planning Division and the City Attorney's Office reviewed the number of property owners who filed the appeal as compared to those on the mailing list for the March, 2010, meeting notification.

The mailing list for the March notice showed 31 property owners to receive notice. This calculation excludes the Edgewater itself and two condominium associations which appear to be listed as parcels for convenience of the Assessor's office only. The appeal filed on April 2, 2010, contained 8 names, but only 6 owners who were on the list to receive notice. Two of signers were rejected because the properties were not on the list of those receiving notice.

Based upon this review, our office advised the Planning Division and the appellants that the appeal failed to meet the standards in the Madison ordinances, as only 6 of 31 or 19% of the owners had signed the appeal.

Appellants argued to the City Attorney that the language in the ordinance did not refer to each property owner for each piece of property, but the total number of property owners. We rejected this interpretation of the ordinances because it could lead to some absurd results. For example, if you assume that there are 20 pieces of property that are entitled to receive notice, with nine persons each owning an individual property, and one person owning ten properties, under the appellant's interpretation any two who are property owners would constitute 20% and be able to bring the appeal. However the one person, who in fact owns half of the properties affected by the proposed CU, would not be able to bring the appeal. We do not believe this is the intent of the Madison ordinances. Under our reading of the ordinance, each property has a separate property owner, and under this hypothetical, there are 20 property owners.

Either the one property owner could sign for at least four of the properties, or any other four property owners could sign for their properties, and either of these situations would constitute 20% allowed to bring the appeal.

Based upon the information available to the City Attorney at that time, the determination that the appeal failed to meet the requirements of the Madison ordinances was correct. If the Council determines that it will look no further than the face of the filings and the list of property owners, it would remain the correct conclusion.

3. Use of the Wrong Mailing List: Potential Estoppel of the City.

Subsequent to this initial determination, our office was informed that the reason the appellants failed to have the requisite number of signators is that they utilized the mailing list from December, 2009, rather than March, 2010.

Under normal circumstances, this fact would not have modified our view of the validity of the appeal. It normally is up to the parties bringing the appeal to make certain they follow the proper procedures and meet the requirements of the City ordinances in order to bring a valid appeal. Particularly in this case where some of the appellants received the second notice, from a different City department, and in a different form than the initial notice, we believe that the appellants should have known that they should not be using the mailing list from December, 2009. Appellants were aware that the boundaries of the project had changed, and the December, 2009 mailing list could not be correct because it was based on measurements from different project boundaries.

However, the appellants indicated to our office that they used the wrong list based upon information provided by the City Clerk's Office. Our office spoke with Mr. Tim Umland, an attorney, who had assisted in preparing the appeal. He indicated that he had obtained the December, 2009, list from Legistar, and had spoken directly with an individual in the City Clerk's Office. Mr. Umland stated that he asked whether there was any other mailing list. He indicated that he was told by the Clerk's Office that "No, there is not another mailing list."

Mr. Umland was not able to recall to whom he spoke in the Clerk's Office. He stated that it was a woman, but he did not have her name.

We asked City Clerk Maribeth Witzel-Behl to ask her staff if any of them remember talking to anyone about the Edgewater Appeal. None of them in the office at that time did. We also talked to a former employee of the City Clerk's Office who has since left the office. This employee also indicated that she had not talked to anyone regarding the Edgewater appeal.

One employee, Deputy Clerk Adam Gallagher, was out of the office when we made these initial inquiries. We subsequently talked with Mr. Gallagher, who did remember speaking with someone about the Edgewater mailing lists. Mr. Gallagher

stated that he was asked if the mailing list on Legistar for this item was the only list. He checked the Legistar file and informed the person that "I checked through the Legistar file for this item and this is the only list I see." Mr. Gallagher did not refer the person to the Planning Division, but he does recall that he was asked where the Clerk's office gets the list of names for the notice and that Mr. Gallagher told him, "We get the list from Planning and simply put the mailing labels on the mailing."

I concluded from this that the appellants had contacted the City Clerk's Office, and were told that there was not another list in Legistar. The appellants did not contact the City Planning Division, even though they knew the second notice came from that office and even though Mr. Gallagher indicated that is where the mailing list originates.

The appellants later filed an "Amended Appeal" that did contain sufficient signatures. The Amended Appeal is invalid because it was not filed within 10 days of the action of the Plan Commission, as required by sec. 28.12(11)(i), MGO. However, it does demonstrate that if appellants had the correct list, they could have filed sufficient names to have a valid appeal.

The question then becomes whether, under these circumstances, the City should accept the appeal, because for equitable reasons, it would be unfair to the appellants to reject their appeal based upon the information provided by the Clerk's Office.

The law about allowing such equitable relief falls under the legal rubric of "estoppel." The law asks whether the City should be prevented (estopped) from denying the appeal based on a test with four elements. These are (1) action or non-action (2) on the part of one against whom estoppel is asserted; (3) reasonable reliance on the action or non-action by the one seeking estoppel, and (4) detriment resulting from the reliance on the action or non-action. *Village of Hobart v. Brown County*, 281 Wis.2d 628, 630 (2005). It is well established law that estoppel is not applied "... as freely against governmental agencies as in the case of private persons". *Id. at 643*. Particularly in the case of zoning regulations, a municipality cannot be estopped from asserting a violation of its zoning ordinance, even when erroneous acts of municipal officers are involved. *Id. at 641*. To do otherwise would result in endless litigation over words of employees and elevate the mistake of an official above the right of citizens to have the laws enforced. *Id. at 642, 644*.

On the other hand, courts have the authority to deny enforcement of an ordinance when equitable principles are involved. *Id. at 645*. Furthermore, the cases establishing that a municipality cannot be estopped from enforcing violations of its ordinances do not prevent a Zoning Board of Appeals from considering the effect of misrepresentations by officials when determining whether or not to approve a variance. *Accent Developers, LLC v. City of Menomonie Board of Zoning Appeals*, 300 Wis. 2d 561, 566 (Ct. App. 2007).

In the case of this conditional use appeal, although a zoning ordinance is involved, it is a procedural, not substantive ordinance and does not affect as directly the

promotion of health, safety and general welfare that is the premise underlying the doctrine of disfavoring estoppel against a municipality.

The City Attorney found the testimony of both Mr. Umland and Deputy Clerk Gallagher to be credible. We think that information establishes that appellants could prove 3 of the 4 elements of an estoppel, namely, that there was action ("This is the only list I see") by the party against whom estoppel is sought (the City, through the Deputy Clerk) that the appellants relied upon to their detriment.

It is less clear that the fourth element can be shown: that appellants' reliance on the representations of the Clerk's Office was reasonable. As stated previously, there were several reasons why the appellants should have questioned their understanding from the conversation with the Clerk's Office that there was only one list and it was the list from the mailing in December, 2009. The notification area is based on a measurement from the boundaries of the project. The appellants knew that the boundaries had changed from the boundaries that generated the December, 2009 list. Furthermore, at least one of the appellants (Fred Mohs) received a notice in March for property that was not on the December, 2009 list. The second notice came from letterhead of the Planning Division, not the Clerk's Office. Deputy Clerk Gallagher stated that he told the person inquiring about the list that the list came from Planning. The appellants never contacted the Planning Division. The appellants are not unsophisticated citizens, but real estate developers and attorneys.

On the other side of the ledger is the statement by the Clerk's Office that the list in Legistar is the only list. One can certainly argue that the City Clerk's Office should be aware of the notices.

The issues before the Council are not legal issues; they are a policy and a factual issue. We recommend that the Council should formally make a determination to either accept or reject the appeal, based on its conclusions on the policy and factual issues.

The policy issue is whether the Council wants to look behind the face of the appeal papers at all. Deciding that you will not make inquiry beyond the face of the papers creates a bright line for City staff to follow in the future, and will avoid the possibility that future appellants will call various City staff for advice, in the hopes of creating an issue to bolster an appeal. It provides for a simple and straightforward application here and in the future.

The factual issue, if the Council decides it wants to look at the underlying facts, is whether appellants reasonably relied on the information from the Clerk's office. This is the sort of question that regularly goes to juries to determine the facts of a case. We have laid out the countervailing circumstances that the Council could consider. If the Council finds that the reliance was reasonable, we believe an estoppel is shown, and the appeal could be accepted.

A preliminary determination on these issues would be by majority vote.

4. The Question of Multiple Notices.

The analysis above is based on the mailing lists provided to the City Attorney by the Planning Division, with only the exclusions noted above. However, in pursuing the investigation noted above, the City Attorney became aware of another wrinkle in the analysis. The mailing list for the March 22, 2010 meeting that our office used to verify the appeal was the Planning Division list containing the names of all properties and their owners within the required distance. This list is included as Exhibit B. The Planning Division gave the list in Exhibit B to appellants when appellants discovered they had used the wrong list.

Our office was later given a slightly revised list, which is attached to this memo as Exhibit D. This list has the same property owners, but a number of property owners' names are crossed off. When the labels from that list actually were affixed to the notices, however, the Department Staff sent only one notice to property owners of multiple properties, which accounts for the crossed-out properties in Exhibit D.

We do not think the failure to send multiple notices affects the regularity of the proceedings; the owners received notice and some of them appeared at the March 22, 2010 meeting to oppose the Conditional Use. But we do think it raises questions about the denominator used to make the 20% of property owners needed for a valid appeal. This is because the ordinance uses the phrase "20% or more of the property owners notified" (Emphasis added, sec. 28.12(11)(i), MGO).¹

In our interpretation of the ordinance, noted above, each owner of each parcel qualifies as a property owner for considering the 20% threshold. But, if we agree each such owner is a property owner, then each such owner is entitled to notice and, if they did not get notice, they cannot be one of the "property owners notified"

This distinction is important in this instance because two owners of multiple parcels, National Guardian Life and Fred Mohs, each received one notice, despite the fact that they own multiple parcels. Each notice has, on the mailing label, the parcel at issue.

Again, we do not believe this impacts the validity of the proceedings. It does mean, however, that the number of "property owners notified" were less than the figures calculated by our office initially. If those multiple properties are removed, then the initial appeal filed by the appellants is greater than 20% of the owners notified. Since 5 property owners received only one notice, the total number of property owners "notified" is reduced from 31 to 26. Six owners validly signed the appeal, meaning that 6/26 or 23% of property owners notified signed the appeal. The appeal would then be valid.

¹ The City Attorney believes this clause in the zoning code should be clarified. It should refer to the property owners entitled to notice under sec. 28.12(11)(f), MGO, not those who were notified. This will help eliminate confusion or discussion over which owners were notified.

The Council could determine to grant the appeal solely on this issue, without considering the estoppel issue. We recommend separate consideration of this issue in determining whether to accept the appeal.

5. Council Consideration of the Appeal.

Should the Council accept the appeal, Sec. 28.12(11)(i.), MGO, requires further notice and public hearing. There is no standard for review specified in the ordinance, other than the statement that the "action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a favorable vote of two-thirds (2/3) of the members of the Common Council, reverses or modifies the action of the City Plan Commission."

Typically, the Common Council hears from the public, considers the relevant record of the Plan Commission and determines whether the decision of the Plan Commission should be upheld, modified, or reversed. This will be a separate item on the Council's agenda, and testimony on this item should be limited to the conditional use appeal, and not consider other Edgewater items that may be on the same agenda.

Appellants' counsel is correct, as noted in a recent communication, that the Common Council reviews the Plan Commission's record to determine if there is a basis for sustaining the grant of the conditional use. Appellants allege that there is an absence of such a record and suggest a remand to the Plan Commission to make such a record.

To do so, however, would require review of the record by the Common Council and a decision to remand for further findings would not address the substantive issue of whether the standards for a conditional use were met. It would have the Plan Commission review its own record to provide more explicit findings for its determination that the conditional use standards were met. Appellants would likely then try to bring the substantive issues back before the Common Council

Given that appellants' counsel agrees that the Common Council reviews the Plan Commission record to determine whether the decision should be sustained, the more expedient option is for the Common Council to determine whether the record supports the Plan Commission's determination only one time. In reviewing the record, the Council could, if it so found, make a finding that it was denying the appeal because the record before the Plan Commission supports that the findings necessary for a conditional use are satisfied.

The standards for granting a conditional use are set forth in sec. 28.12(11)(g), MGO. Because the standards are lengthy, a copy of that section is attached to this memorandum as Exhibit E. The issue before the Council is whether the entire record before the Plan Commission supports the Commission's decision to grant the conditional use.

In practice, when granting a conditional use, the Plan Commission usually does not spell out each of the conditions in sec. 28.12(11)(g) and make a separate finding that the condition was satisfied; the determination to grant the conditional use implies that the necessary conditions were met. Indeed, the ordinance language itself supports this approach: in sec. 29.12(11)(g)9.c., the ordinance states that:

... when a conditional use application is denied, the Plan Commission shall furnish the applicant in writing those standards that are not met and enumerate the reasons the Commission has used in determining that each standard was not met.

There is no similar requirement in the ordinance when a conditional use is approved.

6. Conclusion.

The Council must first determine whether to accept the appeal. If the Council determines that the proper manner of counting the "property owners notified" is as suggested in section 4 of this memo, then the appeal is valid, and the Council need not consider other issues. If the Council does not accept that suggestion, then it will need to look at the issue of estoppel.

If the Council considers estoppel, the first question is whether to even look behind the face of the appeal papers and the list of those entitled to notice. That is a policy question. If the Council determines to look at the underlying facts, the key question is whether the appellants' reliance was reasonable under the circumstances. If it was, then an estoppel is shown, and the appeal may be accepted and considered.

In considering the appeal, the Council will have a public hearing and must examine the record before the Plan Commission to determine if the Commission's action should be modified or reversed. It will take a 2/3 (14 votes) majority to modify or reverse the Plan Commission's decision to grant the CU. In considering the appeal, the Council may make a determination that the record before the Plan Commission supports the findings required by sec. 28.12(11)(g), MGO.

CC: Brad Murphy

EXHIBIT A TO EDGEWATER CU MEMO
NOTICE AND MAILING LIST (PROPERTY OWNERS ONLY) FROM
DECEMBER, 2009

Sent to Property
Owners: 12-3-09

NOTICE OF PUBLIC HEARING

The Common Council of the City of Madison having before it for consideration a proposed ordinance relating to zoning and city planning.

NOTICE IS HEREBY GIVEN, that a public hearing will be held in the Council Chambers, Room 201, in the City-County Building on Monday, December 14, 2009 before the Plan Commission; where opportunity will be afforded to all interested in being heard; and on Tuesday, January 5, 2010 at 6:45 p.m. before the regular meeting of the Common Council, at which time action on the ordinance will be considered.

Public Hearing Items may be called at any time after the beginning of the Plan Commission public hearings – 6:00 pm. Anyone wishing to speak on an item must fill out a registration slip and give it to the person running the meeting. The registration slips are on a table near the front of the meeting room, just inside the doors to the room.

The Plan Commission uses a "consent agenda", which means that the Commission can consider any item at 6:00 pm, if there are no registrants wishing to speak in opposition regardless of where the item is listed on the agenda".

1. Ordinance ID# 15955 - Rezone 666 Wisconsin Avenue.
Sponsor: Common Council by Request

Creating Section 28.06(2)(a)3453. of the Madison General Ordinances rezoning property from HIST-MH Mansion Hill Historic District, OR Office Residence District, and R6H General Residence District to PUD(GDP) Planned Unit Development (General Development Plan) District and creating Section 28.06(2)(a)3454. of the Madison General Ordinances rezoning property from PUD(GDP) Planned Unit Development (General Development Plan) District to PUD(SIP) Planned Unit Development (Specific Implementation Plan) District. Proposed Use: Redevelop and Expand Existing Edgewater Hotel to a 228-Room Hotel; 666 Wisconsin Avenue: 2nd Aldermanic District.

On December 14, 2009, the Plan Commission will also consider a Conditional Use for Waterfront Development for the Edgewater Hotel project; 666 Wisconsin Avenue: 2nd Aldermanic District.

WSJ: PUB DATES: 12/4/09 & 12/7/09

MARIBETH WITZEL-BEHL, CITY CLERK

R/ 666 Wisconsin Ave.

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666wa 0709-144-0902-8
Location: 22 Langdon St
22 LANGDON LLC
4905 TONYAWATHA IRL
MADISON WI 53716

666wa 0709-144-0901-0
Location: 28 Langdon St
ALPHA PHI CHAP HOUSE ASSC
28 LANGDON ST
MADISON WI 53703-1305

666wa 0709-144-0306-2
Location: 522 N Pinckney St
AMBASSADOR BY THE LAKE
LLC, THE
2417 UNIVERSITY AVE
MADISON WI 53726

666wa 0709-144-0210-5
Location: 529 N Pinckney St
APEX 529 LLC
1741 COMMERCIAL AVE
MADISON WI 53704

666wa 0709-144-0904-4
Location: 12 Langdon St
BETA GAMMA HOUSING CORP
% JON BIRSCHBACH
4308 HILLTOP CIR
MIDDLETON WI 53562

666wa 0709-144-3203-7
Location: 519 N Pinckney St # C
BLYTHE, VERDA A
519 N PINCKNEY ST #C
MADISON WI 53703-1411

666wa 0709-144-0906-0
Location: 2 Langdon St
CWJ 2 LLC
626 LANGDON ST # 108
MADISON WI 53703

666wa 0709-144-0303-8
Location: 28 E Gilman St
DEVITI, EUGENE S.
28 E GILMAN ST
MADISON WI 53703-1465

666wa 0709-144-3102-1
Location: 531 N Pinckney St # B
DONOVAN, WILLIAM & KIM
531 N PINCKNEY ST UNIT B
MADISON WI 53703

666wa 0709-144-0907-8
Location: 666 Wisconsin Ave
EDGEWATER HOTEL
666 WISCONSIN AVE
MADISON WI 53703-1385

666wa 0709-144-0903-6
Location: 16 Langdon St
FRATERNITY OF PHI GAMMA
% BMOG
PO BOX 188
MADISON WI 53701

666wa 0709-144-0206-4
Location: 104 E Gilman St
HARCROFT 104 LLC
% CHT APARTMENT RENTALS
PO BOX 512
MADISON WI 53701-0512

666wa 0709-144-3202-9
Location: 519 N Pinckney St # B
HARLOWE REV LIV TRUST
601 YOSEMITE PL
MADISON WI 53705

666wa 0709-144-3105-5
Location: 531 N Pinckney St # E
HIEGEL, JERRY M
531 N PINCKNEY ST #E
MADISON WI 53703-1411

666wa 0709-144-0208-0
Location: 525 N Pinckney St
HOBBS/VAN VLECK HOUSE CDM
ASSOC % HAL HARLOWE
519 N PINCKNEY ST STE B
MADISON WI 53703

666wa 0709-144-3104-7
Location: 531 N Pinckney St # D
MAYER, GERALDINE F
531 N PINCKNEY ST # D
MADISON WI 53703

666wa 0709-144-0207-2
Location: 515 N Pinckney St
MILLER, KENNETH N
& DUANE W & JANE M MILLER
1208 SPAIGHT ST
MADISON WI 53703

666wa 0709-144-0801-2
Location: 1 Langdon St
MOHS, FREDERIC E
20 N CARROLL ST
MADISON WI 53703-2707

666wa 0709-144-0802-0
Location: 17 Langdon St
MOHS, FREDERIC E
20 N CARROLL ST
MADISON WI 53703-2707

666wa 0709-144-0905-2
Location: 10 Langdon St
MORGAN HOUSE APTS LLC
% STEPHEN D BROWN
120 W GORHAM ST
MADISON WI 53703

666wa 0709-144-0302-0
Location: 2 E Gilman St
NATIONAL GDRN LIFE INS CO
ATTN: BRIAN HOGAN
P O BOX 1191
MADISON WI 53701-1191

666wa 0709-144-0304-6
Location: 516 N Pinckney St
NATIONAL GRDN LIFE INS CO
ATTN: BRIAN HOGAN
PO BOX 1191
MADISON WI 53701-1191

666wa 0709-144-0305-4
Location: 520 N Pinckney St
NATIONAL GRDN LIFE INS CO
ATTN: BRIAN HOGAN
PO BOX 1191
MADISON WI 53701-1191

666wa 0709-144-0307-0
Location: 530 N Pinckney St
NATIONAL GRDN LIFE INS CO
ATTN: BRIAN HOGAN
PO BOX 1191
MADISON WI 53701-1191

666wa 0709-144-0801-2
Location: 1 Langdon St # 101
OCCUPANT
1 Langdon St # 101
Madison WI 53703

666wa 0709-144-0801-2
Location: 1 Langdon St # 102
OCCUPANT
1 Langdon St # 102
Madison WI 53703

666wa 0709-144-0801-2
Location: 1 Langdon St # 103
OCCUPANT
1 Langdon St # 103
Madison WI 53703

666wa 0709-144-0801-2
Location: 1 Langdon St # 104
OCCUPANT
1 Langdon St # 104
Madison WI 53703

666wa 0709-144-0801-2
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666wa 0709-144-3205-3
Location: 519 N Pinckney St # E
PALLONI, ALBERTO
1630 CHICAGO AVE # 1108
EVANSTON IL 60201-4590

666wa 0709-144-3106-3
Location: 531 N Pinckney St # F
PINCKNEY HOLDINGS LLC
5349 COMANCHE WAY
MADISON WI 53704

666wa 0709-144-0211-3
Location: 533 N Pinckney St
PINCKNEY PLACE CDM OWNERS
ASSOC
315 W GORHAM STREET
MADISON WI 53703-2095

666wa 0709-144-3103-9
Location: 531 N Pinckney St # C
PINCKNEY PROPERTIES LLC
% HARVEY WENDEL
PO BOX 2038
MADISON WI 53701-2038

666wa 0709-144-3101-3
Location: 531 N Pinckney St # A
SMITH, IRWIN & LINDA
7716 E BLACK MOUNTAINS RD
SCOTTSDALE AZ 85266

666wa 0709-144-3201-1
Location: 519 N Pinckney St # A
WALLBANK, NIGEL D
& RACHEL S MILLER
519 N PINCKNEY ST # A
MADISON WI 53703

666wa 0709-144-0205-6
Location: 116 E Gilman St
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EXHIBIT B TO EDGEWATER CU MEMO
NOTICE AND MAILING LIST (PROPERTY OWNERS ONLY) FROM
MARCH, 2010



Department of Planning and Community & Economic Development
Planning Division

Website: www.cityofmadison.com

Madison Municipal Building
215 Martin Luther King, Jr. Boulevard
P.O. Box 2985
Madison, Wisconsin 53701-2985
(TTY/TEXTNET) 866 704 2318
FAX 608 267-8739
PH 608 266-4635

March 12, 2010

NOTICE OF PUBLIC HEARING

The City of Madison Plan Commission will hold a public hearing at **6:00 p.m., Monday, March 22, 2010**, in the Council Chambers, City-County Building Room 201, 210 Martin Luther King Jr. Boulevard, regarding an application to **Rezone 666 Wisconsin Avenue and a portion of 2 E. Gilman Street** from R6H (General Residence District) and HIS-MH OR (Mansion Hill Historic District-Office-Residence District) to Planned Unit Development-General Development Plan-Specific Implementation Plan (PUD-GDP-SIP) and a **Conditional Use for Waterfront Development** to allow redevelopment and expansion of the Edgewater Hotel and construction of a parking structure.

The Common Council will hold a public hearing on this proposal on **Tuesday, April 20, 2010 at 6:45 p.m.** in the Council Chambers, City-County Building Room 201 at which time action will be taken on this project.

The purpose of this public hearing is to hear all the interested parties. An effort has been made to notify all of the immediate neighbors of this proposal. To ensure that as many people as possible know about this hearing, please share this notice with any of your neighbors or tenants that may be interested.

The Plan Commission meeting agenda will be available on the City of Madison website, at: <http://legistar.cityofmadison.com/calendar/#current>.

Please note: public hearing items may be called at any time after the beginning of the public hearing. Those wishing to speak on an item must fill out a registration slip and give it to the Secretary. The Plan Commission uses a consent agenda, which means that the Commission can consider any item at 6:00 p.m. where there are no registrants wishing to speak in opposition, regardless of its placement on the agenda.

If you have any questions regarding this public hearing, please contact Tim Parks of the Planning Division at 266-4635.

Department of Planning and Community & Economic Development

If you need an interpreter, materials in alternate formats or other accommodations to access this service, activity, or program, please call the phone number below at least three business days prior to the meeting.

Yog hais tias koj xav tau ib tug neeg txhais lus, ib tug neeg txhais ntawv, cov ntawv ua lwm hom ntawv los sis lwm cov kev pab kom siv tau cov kev pab, cov kev ua ub no (activity) los sis qhov kev pab cuam, thov hu rau tus xov tooj hauv qab yam tsawg peb hnuv ua hauj lwm ua ntej yuav tuaj sib tham.

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Department of Planning and Community & Economic Development, (608) 266-4635, TTY/Textnet (866) 704-2318



City of Madison

Proposed Rezoning and Conditional Use

Location

666 Wisconsin Avenue

Applicant

Robert P. Dunn - Landmark X/

Amy Supple - Hammes Company

From: HIST-MH OR & To: PUD-GDP-SIP
R6H

Existing Use

Edgewater Hotel

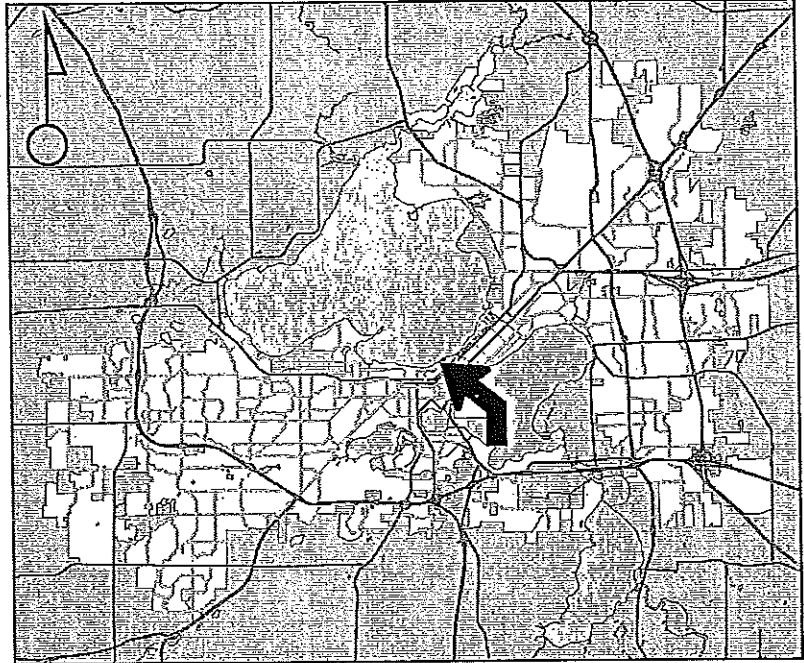
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Redevelop and Expand Existing Edgewater Hotel and Construct Parking Structure on a Waterfront Lot

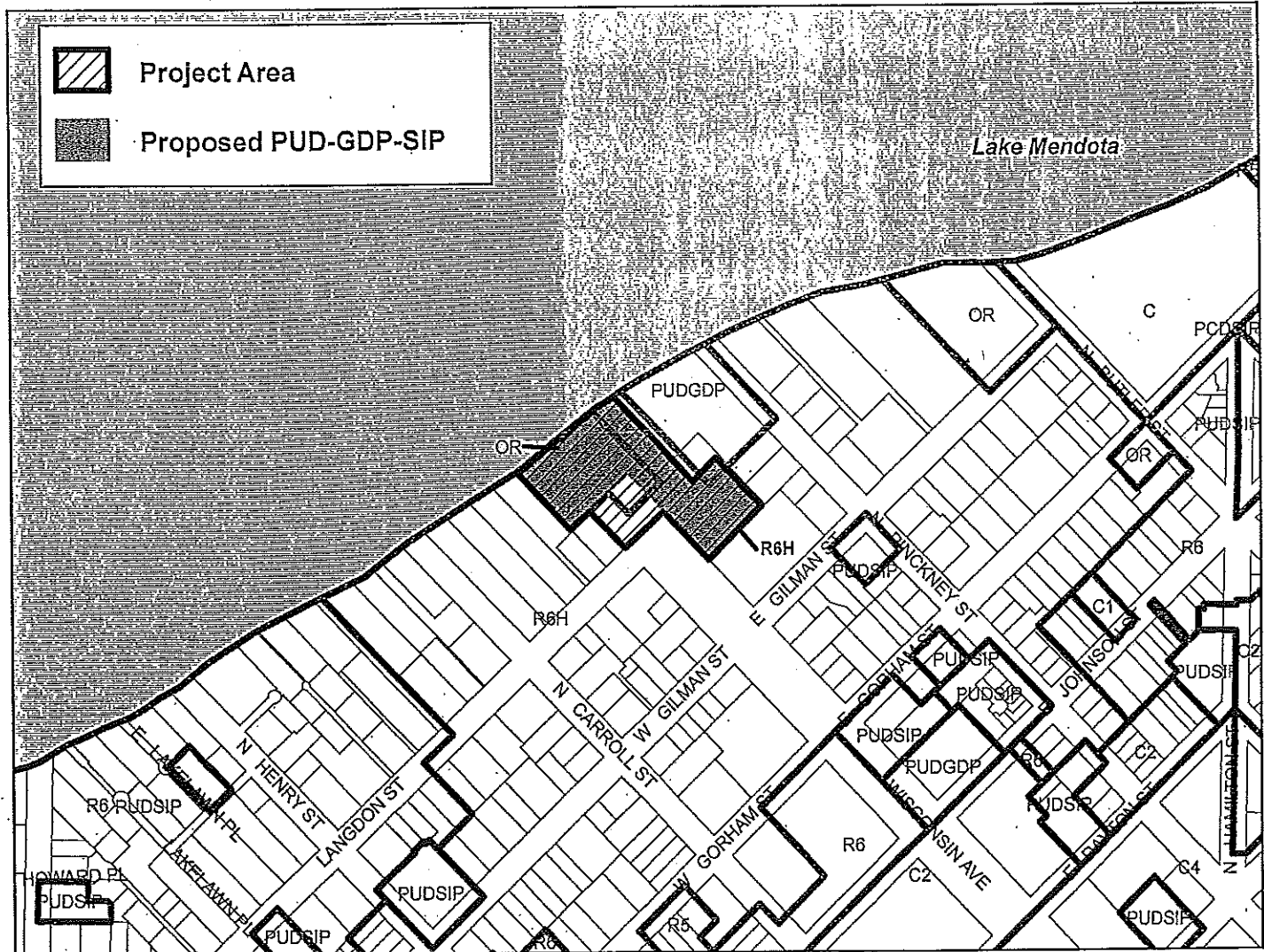
Public Hearing Dates

Plan Commission
22 March 2010

Common Council
20 April 2010





For Questions Contact: Tim Parks at: 261-9632 or tparks@cityofmadison.com or City Planning at 266-4635



Scale : 1" = 400'

City of Madison, Planning Division : RPJ : Date : 10 March 2010

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OCCUPANT
1 Langdon St # 103
Madison WI 53703

666wa 0709-144-0801-2
Location: 1 Langdon St # 104
OCCUPANT
1 Langdon St # 104
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PC MEETING : 22 MARCH 2010


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ASSOC
315 W GORHAM STREET
MADISON WI 53703-2095

666wa 0709-144-3103-9
Location: 531 N Pinckney St # C
PINCKNEY PROPERTIES LLC
% HARVEY WENDEL
PO BOX 2038
MADISON WI 53701-2038

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Location: 531 N Pinckney St # A
SMITH, IRWIN & LINDA
7716 E BLACK MOUNTAINS RD
SCOTTSDALE AZ 85266

666wa 0709-144-3201-1
Location: 519 N Pinckney St # A
WALLBANK, NIGEL D
& RACHEL S MILLER
519 N PINCKNEY ST # A
MADISON WI 53703

666wa 0709-144-0814-5
Location: 516 Wisconsin Ave
WISCONSIN AVE HOUSE LLC
% FREDERIC E MOHS
20 N CARROLL ST
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EXHIBIT C TO EDGEWATER CU MEMO

APPEAL PAPERS FILED APRIL 2, 2010

**CITY OF MADISON
PLAN COMMISSION**

RECEIVED
APR 2010

In Re:

**Conditional Use for Waterfront
Development Edgewater Hotel
666 Wisconsin Ave.**

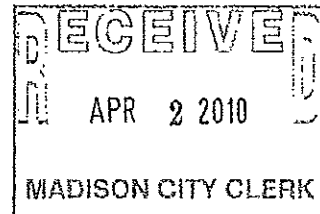
Legistar I.D. #17311

RECEIVED
MAR 2010

APPEAL FROM ACTION BY CITY PLAN COMMISSION

TO:

Mark A. Olinger
Secretary
City of Madison Plan Commission



PLEASE TAKE NOTICE, that the undersigned, constituting not less than 20% of the property owners notified of this matter, object to the establishment of a Waterfront Development Conditional Use for the Edgewater Hotel, 666 Wisconsin Ave., as approved by the City of Madison Plan Commission on March 23, 2010, and do hereby appeal said decision to the Common Council of the City of Madison pursuant to §28.12(11)(i) of the City of Madison Zoning Code.

The grounds for this appeal are as follows:

1. A Waterfront Development Conditional Use for the Edgewater Hotel was considered by the Plan Commission at its meeting of March 22 and 23, 2010.
2. The Waterfront Development Conditional Use was approved by voice vote following a motion for approval.
3. The Plan Commission approved the motion without debate or consideration.

4. City of Madison Zoning Code §§28.04(19)(b) and 28.12(11)(b) & (g) require that no application for a conditional use shall be granted by the City Plan Commission unless such commission shall find that the conditions of §§28.04(19)(b)1-7 and §§28.12(11)(g)1 - 11 are present.

5. The Plan Commission proceedings of March 22 and 23, 2010 did not include consideration of these standards and the Plan Commission failed to find that all of the described conditions are present.

6. Absent a specific finding that the requisite conditions are present, the Plan Commission cannot grant the requested conditional use application.

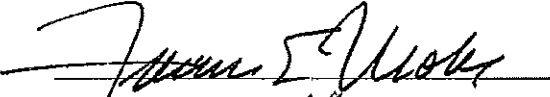
Appellants respectfully request a hearing of this appeal before the City of Madison Common Council, a ruling that the Plan Commission failed to make the requisite findings before granting the conditional use application, and a reversal of the Plan Commission approval of the Waterfront Development Conditional Use

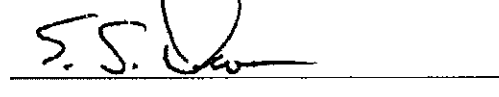
Dated this 31st day of March, 2010

Dated this 31st day of March, 2010

Frederic E. Mohs
Owner of One Langdon Street
Tax ID 0709-144-0801-2

Eugene S. Devitt
Owner of 28 East Gilman
Tax ID 0709-144-0303-8





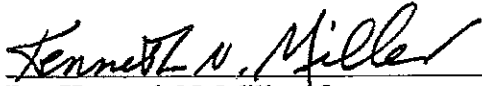
CWJ 2 LLC
Owner of ~~126~~ Langdon Street, #~~108~~
Tax ID 0709-144-0906-0

17 Langdon Street, LLC
Owner of 17 Langdon Street
Tax ID 0709-144-0802-0

By: 
Member

By: 
Mary Mohs, Member

Kenneth N. Miller, Duane W. and
Jane M. Miller
Owners of 515 N. Pinckney St.
Tax ID 0709-144-0207-2



By: Kenneth N. Miller, Owner

Harlowe Revocable Living Trust
Owner of 519 N. Pinckney Ste. B
Tax ID 0709-144-3202-9

By: _____
Member

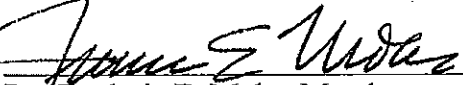
22 Langdon LLC
Owner of 22 Langdon St.
Tax ID 0709-144-0902-8

By: _____
Member

Zilber Trust et al, James and Stephen J.
Chevalier, TR
Owner of 116 E. Gilman St.
Tax ID 0709-144-0205-6

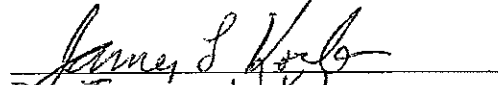
By: _____
Member

122 East Gilman LLP
Owner of 122 E. Gilman Street
Tax ID 0709-144-0204-8



By: Frederic E. Mohs, Member

Harcroft 104 LLC
Owner of 104 E. Gilman Street
Tax ID 0709-144-0206-4


By: James L. Korb
Member

MAR-31-2010 10:00

MMW

Kenneth N. Miller, Duane W. and
Jane M. Miller
Owners of 515 N. Pinckney St,
Tax ID 0709-144-0207-2

Kenneth N. Miller
By: Kenneth N. Miller, Owner

Harlowe Revocable Living Trust
Owner of 519 N. Pinckney Ste. B
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By: _____
Member

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WAITING ON
ORIGINAL
TP 4/1/10

Thomas G. Berwinski
By: _____
Member

122 East Gilman LLP
Owner of 122 E. Gilman Street
Tax ID 0709-144-0204-8

Frederic E. Mohs
By: Frederic E. Mohs, Member

Harcroft 104 LLC
Owner of 104 E. Gilman Street
Tax ID 0709-144-0206-4

James L. Korb
By: James L. Korb
Member

This appeal has been drafted on behalf of the appellants by:

Atty. Dean B. Richards
Reinhart Boerner Van Deuren sc
P.O. Box 2265 22 East Mifflin St.
Waukesha, WI 53187-2265 Madison, WI 53701-2018
262-951-4561 608-229-2200
drichards@reinhartlaw.com

EXHIBIT D TO EDGEWATER CU MEMO
NOTICE AND MAILING LIST (PROPERTY OWNERS ONLY) FROM
MARCH, 2010, SHOWING CROSS-OUTS



Department of Planning and Community & Economic Development
Planning Division

Website: www.cityofmadison.com

Madison Municipal Building
215 Martin Luther King, Jr. Boulevard
P.O. Box 2985
Madison, Wisconsin 53701-2985
(TTY/TEXTNET) 866 704 2318
FAX 608 267-8739
PH 608 266-4635

March 12, 2010

NOTICE OF PUBLIC HEARING

The **City of Madison Plan Commission** will hold a public hearing at **6:00 p.m., Monday, March 22, 2010**, in the Council Chambers, City-County Building Room 201, 210 Martin Luther King Jr. Boulevard, regarding an application to **Rezone 666 Wisconsin Avenue and a portion of 2 E. Gilman Street** from R6H (General Residence District) and HIS-MH OR (Mansion Hill Historic District-Office-Residence District) to Planned Unit Development-General Development Plan-Specific Implementation Plan (PUD-GDP-SIP) *and* a **Conditional Use for Waterfront Development** to allow redevelopment and expansion of the Edgewater Hotel and construction of a parking structure.

The **Common Council** will hold a public hearing on this proposal on **Tuesday, April 20, 2010 at 6:45 p.m.** in the Council Chambers, City-County Building Room 201 at which time action will be taken on this project.

The purpose of this public hearing is to hear all the interested parties. An effort has been made to notify all of the immediate neighbors of this proposal. To ensure that as many people as possible know about this hearing, please share this notice with any of your neighbors or tenants that may be interested.

The Plan Commission meeting agenda will be available on the City of Madison website, at: <http://legistar.cityofmadison.com/calendar/#current>.

Please note: public hearing items may be called at any time after the beginning of the public hearing. Those wishing to speak on an item must fill out a registration slip and give it to the Secretary. The Plan Commission uses a consent agenda, which means that the Commission can consider any item at 6:00 p.m. where there are no registrants wishing to speak in opposition, regardless of its placement on the agenda.

If you have any questions regarding this public hearing, please contact Tim Parks of the Planning Division at 266-4635.

Department of Planning and Community & Economic Development

If you need an interpreter, materials in alternate formats or other accommodations to access this service, activity, or program, please call the phone number below at least three business days prior to the meeting.

Yog hais tias koj xav tau ib tug neeg txhais lus, ib tug neeg txhais ntawv, cov ntawv ua lwm hom ntawv los sis lwm cov kev pab kom siv tau cov kev pab, cov kev ua ub no (activity) los sis qhov kev pab cuam, thov hu rau tus xov tooj hauv qab yam tsawg peb hnuv ua hauj lwm ua ntej yuav tuaj sib tham.

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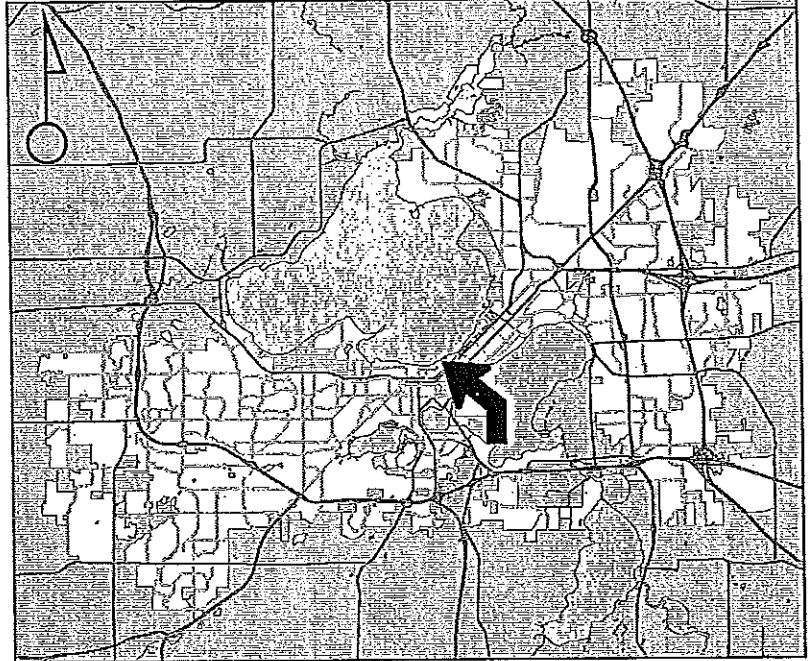
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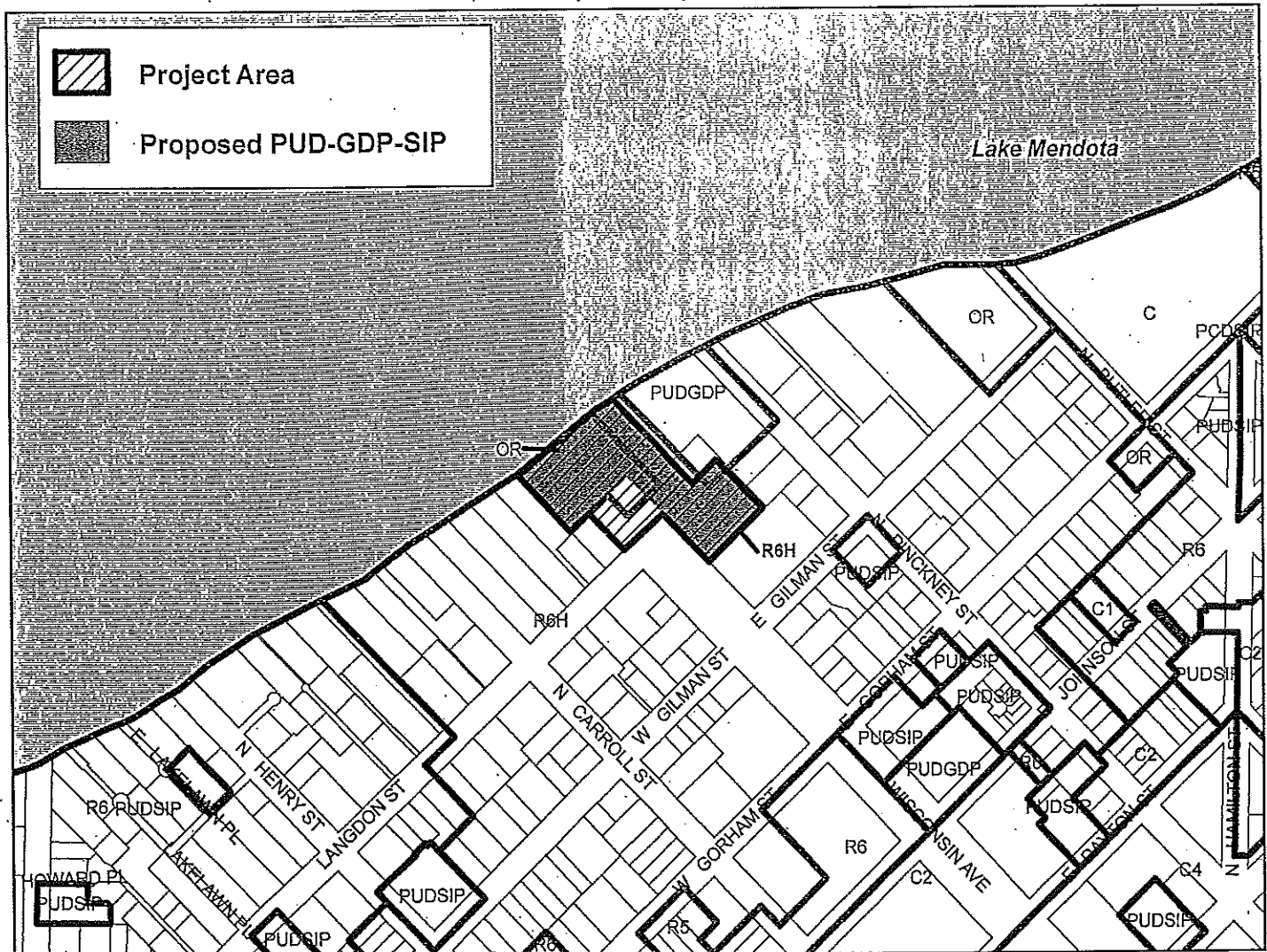
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For Questions Contact: Tim Parks at: 261-9632 or tparks@cityofmadison.com or City Planning at 266-4635



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Location: 531 N Pinckney St # F
PINCKNEY HOLDINGS LLC
531 N PINCKNEY ST # F
MADISON WI 53703

666wa 0709-144-0211-3
Location: 533 N Pinckney St
PINCKNEY PLACE CDM OWNERS
ASSOC
315 W GORHAM STREET
MADISON WI 53703-2095

666wa 0709-144-3103-9
Location: 531 N Pinckney St # C
PINCKNEY PROPERTIES LLC
% HARVEY WENDEL
PO BOX 2038
MADISON WI 53701-2038

666wa 0709-144-3101-3
Location: 531 N Pinckney St # A
SMITH, IRWIN & LINDA
7716 E BLACK MOUNTAINS RD
SCOTTSDALE AZ 85266

666wa 0709-144-3201-1
Location: 519 N Pinckney St # A
WALLBANK, NIGEL D
& RACHEL S MILLER
519 N PINCKNEY ST # A
MADISON WI 53703

666wa 0709-144-0814-5
Location: 516 Wisconsin Ave
WISCONSIN AVE HOUSE LLC
% FREDERIC E MOHS
20 N CARROLL ST
MADISON WI 53703

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SEC. 28.12(11)(g), MGO

- (g) Standards. No application for a conditional use shall be granted by the City Plan Commission unless such commission shall find all of the following conditions are present:
1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare. (Am. by Ord. 13,232, 2-11-03)
 2. That the City be able to provide municipal services to the property where the conditional use is proposed, given due consideration of the cost of providing such services. (Cr. by Ord. 13,012, 2-26-02)
 3. That the uses, values and enjoyment of other property in the neighborhood for purposes already established shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
 4. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 5. That adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit and other necessary site improvements have been or are being provided.
 6. That measures, which may include transportation demand management (TDM) and participation in a transportation management association have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets. (Am. by Ord. 13,422, 10-24-03)
 7. That the conditional use shall conform to all applicable regulations of the district in which it is located.
 8. That when applying the above standards to an application by a community living arrangement the City Plan Commission shall:
 - a. Bear in mind the City's general intent to accommodate community living arrangements.
 - b. Exercise care to avoid an over-concentration of community living arrangements which could create an institutional setting and seriously strain the existing social structure of a community. Considerations relevant for this determination are:
 - i. The distance separating the proposed community living arrangement from other such facilities.
 - ii. The capacity of the community living arrangement and the percent the facility will increase the population of the community.
 - iii. The total capacity of all the community living arrangements in the community.
 - iv. The impact on the community of other community living arrangements.
 - v. The success or failure of integration into communities of other community living arrangements operated by the individual or group seeking the conditional use permit.
 - vi. The ability of the community to meet the special needs, if any, of the applicant facility.

9. That when applying the above standards to any new construction of a building or an addition to an existing building the City Plan Commission:
 - a. Shall bear in mind the statement of purpose for the zoning district such that the proposed building or addition at its location does not defeat the purposes and objective of the zoning district, and
 - b. May require the applicant to submit plans to the Urban Design Commission for comments and recommendations, and
 - c. May consider the use of the proposed building as it relates to the City's Land Use Plan.

When a conditional use application is denied, the Plan Commission shall furnish the applicant in writing those standards that are not met and enumerate reasons the Commission has used in determining that each standard was not met.

(Sec. 28.12(10)(g)8. Cr. by Ord. 5869, 6-1-77)

10. That when applying the above standards to an application for a reduction in off-street parking requirements, the City Plan Commission shall consider and give decisive weight to all relevant facts, including but not limited to the following factors: availability and accessibility of alternative parking; impact on adjacent residential neighborhoods; existing or potential shared parking arrangements; number of residential parking permits issued for the area; proximity to transit routes and/or bicycle paths and provision of bicycle racks; the proportion of the total parking required that is represented by the requested reduction; the proportion of the total parking required that is decreased by Sec. 28.11(2)(a)3.; the characteristics of the use, including hours of operation and peak parking demand times; design and maintenance of off-street parking that will be provided; and whether the proposed use is new or a small addition to an existing use. (Cr. by Ord. 13,227, 1-25-03)
11. That when applying the above standards to telecommunication facilities, the City Plan Commission shall consider the review of the application by a professional engineer required by Sec. 28.04(22)(c)7. (Cr. by Ord. 13,502, 2-10-04; Am. by ORD-08-00041, 4-4-08)

(Sec. 28.12(10)(g) Am. by Ord. 12,163, 7-20-98)

(h) Conditions and Guarantees. The following conditions shall apply to all conditional uses:

1. Prior to the granting of any conditional use, the City Plan Commission may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in (11)(g) above. In all cases in which conditional uses are granted, the commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.
2. No alteration of a conditional use shall be permitted unless approved by the City Plan Commission provided, however, the Zoning Administrator may issue permits for minor alterations or additions which are approved by the Director of Planning and Community and Economic Development and are compatible with the concept approved by the City Plan Commission and the standards in (11)(g) above. (Am. by Ord. 6568, 3-22-79)
3. Where the City Plan Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within twelve (12) months of the date of the Plan Commission's action unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six (6) months of the date of issuance and which shall not be renewed unless