

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

Date: March 12, 2014

**MEMORANDUM**

TO: Mayor Paul Soglin  
All Alders

FROM: Michael P. May, City Attorney  
John Strange, Assistant City Attorney

RE: 149 East Wilson, Legistar 32265, 32124 and 33097  
Protest petition on zoning change and appeal of conditional use

These matters are on the agenda for the March 18, 2014 meeting. Council President Chris Schmidt asked us to summarize the legal standards applicable to the items.

Legistar 32265, Zoning Approval.

The property is currently zoned UMX (Urban Mixed Use). The proposed development would not have the 10-foot rear yard setback required under UMX zoning, so the applicant has requested a change to DC (Downtown Core) which has no such requirement.

The Plan Commission recommended approval of this zoning change. In considering the change, the Council is acting in its legislative capacity. The change should be approved if it is consistent with the health, safety, and welfare of the public, consistent with the City's Comprehensive Plan, and consistent with State and federal law, and should be denied if it fails to meet those standards. Sec. 28.182(6), MGO.

A protest petition has been filed on the zoning change. This does not change the standards to be applied by the Council, but it means that  $\frac{3}{4}$  of the members of the Council voting on the matter must vote in favor of the change for it to be approved. Note this is the rare instance when the super majority is  $\frac{3}{4}$  of the members of the Council voting on the matter as opposed to  $\frac{3}{4}$  of the full Council, or 15 votes. Sec. 29.182(5)(c), MGO.

Legistar 33097, Appeal of Conditional Use Granted in Legistar 32124.

Whether in the UMX or the DC district, the construction would require a conditional use because it is over 20,000 square feet and over 4 stories tall. The proposed building would be 14 stories and built to the Capitol height limit; a conditional use is also required for the elevator penthouse on the roof. Because the conditional use could

apply even if the Council did not approve the zoning change, the Council should vote on the conditional use in all events.

The Plan Commission granted the conditional use. Normally, approval of a conditional use does not come before the Council, but an appeal has been taken from the Plan Commission decision. The action of the Plan Commission will be approved unless 2/3 of the Council (14 votes) vote to reverse or modify the Plan Commission determination. Put another way, while it will take a  $\frac{3}{4}$  vote to approve the Plan Commission's recommended zoning change, it will take no more than 7 votes to approve the Plan Commission's conditional use. Sec. 28.183(5)(b)8, MGO.

The standards applicable to the conditional use are set out at length in the Staff Report of January 3, 2014 (see pages 5-9), and will not be repeated here. The question before the Council is whether there was sufficient evidence before the Plan Commission to support the decision it made.

#### Procedure on March 18.

The Council must determine if it will combine the two public hearings and whether it will therefore limit speakers to a total of 5 minutes to speak on the matters.

The Council also should determine if it intends to have the applicant make an initial presentation and the length of that presentation, and whether it will give an organized group of opponents a similar procedure.

These procedural matters may be addressed by motions to suspend the Council's rules at that time.

A copy of this memorandum will be placed into Legistar as an attachment.

CC: Steve Cover  
Katherine Cornwell  
Tim Parks