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September 7, 2023

VIA E-MAIL & HAND DELIVERY

City of Madison Plan Commission
c/o Secretary Heather Stouder
215 Martin Luther King Jr. Blvd., #017
Madison, WI 53701-2984

RE: Club Car Wash Land Use Application - 3909 and 3913 Lien Road
Reference: Legistar File ID # 78197

Dear Common Council:

This letter constitutes Club Car Wash's appeal to the Madison Common Council, pursuant to Madison General Ordinance (MGO) § 28.183(5)(b), of the Plan Commission's August 28, 2023, denial of Club Car Wash application for a Conditional Use Permit ("CUP") relating to the above project. Per the application, Club Car Wash seeks permission to construct a new Club Car Wash facility at 3909 and 3913 Lien Road.

At its meeting August 28, 2023, the Plan Commission "placed on file" Club Car Wash's application for this Conditional Use Permit without voting to approve or disapprove. Because the application was "placed on file" with no mention of "with prejudice" or "without prejudice," MGO § 28.183 states that this is effectively a final decision and no application for the same use can be resubmitted for a period of one year.

Club Car Wash respectfully requests that the Common Council override the Plan Commission's rejection of this project for the following reasons:

I. Denial of the Conditional Use Permit violates state law.

The Planning Division staff recommended approval of Club Car Wash's request for this CUP. *See* Planning Division Staff Report dated August 28, 2023 [**Attachment A** hereto], at 1. The Planning Division staff report included 87 conditions of approval, all of which Club Car Wash was and is willing to meet, thereby ensuring the proposed car wash complies with all City of Madison requirements.

The City’s Urban Design Commission (“UDC”) favorably reviewed Club Car Wash’s project. After a hearing August 16, 2023, the UDC voted to approve Club Car Wash’s application with the same conditions--again, all of which Applicant was and is fully prepared to meet.

The Plan Commission’s denial of the application under these circumstances violates state law. *See* Wis. Stat. § 62.23. The Wisconsin legislature amended state law governing municipal zoning decisions in 2017. *See* 2017 Wis Act 67. As amended, the law restricts the City’s ability to deny conditional use requests. Here, the Plan Commission’s denial of Club Car Wash’s application violates these requirements.

First, where the applicant for a Conditional Use Permit meets or agrees to meet all of the requirements and conditions specified, approval of the application is mandatory. *See* Wis. Stat. § 62.23(7)(de)2.a (“the city shall grant the conditional use permit.”). Here, Applicant has committed to meet all of the City’s conditions and requirements. Denial of this application, therefore, violates the plain language of Section 62.23.

Second, state law requires that the City’s decision be based on “substantial evidence.” Wis. Stat. § 62.23(7)(de)2.b (“The city’s decision to approve or deny the permit must be supported by substantial evidence.”). Here, the decision to deny the project application lacks evidentiary support. The UDC approved the application. Planning Division Staff recommended that the Plan Commission approve the application. The Plan Commission’s denial is based on factual claims that not only lack evidentiary support but are affirmatively contradicted by the evidence in the record.

II. The Plan Commission’s vote, placing the permit on file, was based on conjecture and opinion, not evidence.

The area surrounding the project is zoned for mixed use. Auto-oriented uses are specifically permitted. No one claimed the car wash was too “auto intensive” during the public hearing portion of the Plan Commission meeting. There were relatively few questions about the development and none of them concerned the “auto-oriented” / “transit-oriented” distinction. Ultimately, the reasons given for denying Applicant’s request are based on conjecture, speculation, and a misreading of the applicable land use requirements.

At the Plan Commission’s hearing, Commissioner Sheppard asked about security at the business. Club Car Wash explained the safeguards in place. Commissioner Mendez asked two questions, one concerning whether cars might spill off the site during peak times onto East Washington Avenue. As Club Car Wash advised, cars in the public right-of-way would not be an issue due to the layout of the property and the capacity of the car wash. The entrance to the car wash is on Lien Road, not East Washington Avenue. The property has capacity for at least thirty cars. And even if more than thirty cars lined up, they would spill onto the private drive that links Lien Road with the car wash property, not onto Lien Road itself. This private drive can hold an

additional 10 to 15 cars, so more than forty cars would need to be lined up before any would even potentially spill into the public right-of-way. This number of cars is beyond expected demand even for peak periods. Moreover, as Club Car Wash’s representative specifically noted, the business can close the entrance to the car wash, should that be necessary, thus blocking additional cars from entering the line and avoiding any overload. There is, in other words, no evidentiary basis on which to conclude that cars would spill into the public right-of-way even during times of peak use.

Mr. Mendez’s second question asked about Club Car Wash’s plan to use the second floor of the building as a regional office. As a follow up to that, Alder Figueroa Cole asked what “region” would be served by this office. Club Car Wash addressed these questions as well. Neither question concerned the allegedly “auto-oriented” aspect of the proposed project.

After the close of the public hearing, Alder Derek Field moved to place Club Car Wash’s CUP application “on file,” with a second from Commissioner McCahill. Alder Field spoke on the motion. There was no other discussion before the vote. Mr. Field asserted – without evidence – that the business would bring in vehicle traffic, with lines of idling cars on the property, and “perhaps off the parcel” as well. He asserted – again without evidence – that the car wash would draw more cars to the area and impede development. These claims have no logical basis given that approximately 45,000 cars drive along East Washington Avenue, adjacent to the proposed site, on a daily basis. Numerous auto-oriented uses currently exist surrounding this location.

III. The Plan Commission’s denial of Applicant’s conditional use request is arbitrary, capricious, and without evidentiary support.

City ordinance requires the Plan Commission to specify its reasons for the denial. MGO § 28.183(5)(a)5. The reasons given for denial of the conditional use permit relate to Conditional Use Standards Nos. 4 and 7. The Plan Commission’s interpretation of these standards is erroneous and unsupported for several reasons. There is simply no rational basis for asserting that Applicant’s proposed use of the property would be detrimental, impede development, or detract from other, more transit-oriented uses.

The Plan Commission erred in concluding the proposed use was contrary to existing land use policy

The property is zoned CC-T Commercial Corridor-Transitional District (“CC-T District”). MGO § 28.067(1) states: “The CC-T District is established to recognize the many commercial corridors within the City that remain largely auto-oriented, and to encourage their transformation into mixed-use corridors that are equally conducive to pedestrian, bicycle, transit and motor vehicle activity.” The CC-T District allows “Car Wash” as a Conditional Use (Table 28D-2). MGO § 28.151 sets forth Supplemental Regulations for the car wash use. Club Car Wash met and was willing to meet all of the conditions recommended by Planning Division Staff

and, thus, all regulations of the CC-T District and the Supplemental Regulations for the car wash use.

The property also lies in the Transit Oriented Development Overlay District (“TOD District”). See MGO § 28.104. While the Statement of Purpose for the TOD District states that “it is intended to support investment in and use of public transit and bicycle connections...[.]” there is no language in the Statement of Purpose to indicate that this mix of uses cannot include auto-oriented uses. There is no prohibition on auto-oriented uses in the TOD District, nor any language in the ordinance that says this Statement of Purpose overrides other zoning laws. There is no evidence, moreover, that operation of the car wash would interfere with or impede public transportation in some way.

MGO § 28.104 states that the TOD District is also intended to: “(a) provide increased mobility choices; (b) improve pedestrian connections, traffic and parking conditions; and (c) foster high-quality buildings and public spaces that help create and sustain long-term economic vitality.” While Club Car Wash’s proposed car wash is clearly geared towards cars, the proposal is not in conflict with these listed purposes of the TOD for several reasons. The proposed site layout actually improves pedestrian connections and traffic conditions. The site provides a sidewalk in front of its site to allow continuous pedestrian connection along Washington Avenue, with no interruption of the pedestrian sidewalk for the length of the property boundary. Further there are no direct access points to the site from Washington Avenue. All vehicles coming to the site must use either Lien Road, from there turning onto internal access drives, or from an existing internal access drive that provides access to the Hy-Vee parking lot. Club Car Wash is providing bicycle parking on site and will promote this as a mode of transportation for employees working at the site. Club Car Wash has also proposed a high-quality building design that was reviewed and granted approval by the UDC and that, as demonstrated in the Supplemental Memorandum submitted by Club Car Wash and in testimony by Club Car Wash at the Plan Commission hearing, will meet all conditions of the Staff Report and all requirements of the MGO and both the Comprehensive Plan and the Greater East Towne Area Plan design guidelines.

The CC-T District overlaps in multiple places in the City of Madison with the TOD District and neither the CC-T District nor the TOD District prohibit or restrict car washes as an allowed use. Indeed, the TOD District includes “Site Standards for Automobile Infrastructure” (MGO Sec. 28.104(8)(b)), acknowledging that the TOD District does not intend to restrict automobile uses, but rather it intends to regulate automobile uses so they operate cohesively with other uses that promote public transit and bicycle connections. Club Car wash met and/or was willing to meet all of the conditions imposed by Planning Division Staff.

Conditional Use Approval Standard No. 4

Alder Field stated that the proposed application did not comply with Conditional Use Approval Standard No. 4: 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. In arguing that the application did not meet this standard, he pointed to the Greater East Towne Area Plan (the “GETAP”), stating that the GETAP encourages improvements that support transit-oriented development and that the GETAP classifies the site as “Community Mixed Use,” which is described in the Madison Comprehensive Plan (the “Comprehensive Plan”) as a mix of residential, office, and retail uses that are transit-oriented uses and that should support modes of transportation outlined in the Comprehensive Plan. Alder Field further stated that the GETAP encourages a mix of uses and that the car wash use and lines of cars that will idle and spill-off the property will discourage residential uses from locating adjacent to the site. This statement, as already indicated, is directly contradicted by the Staff’s recommendation for approval and Club Car Wash’s presentation at the hearing. It has no evidence to support it.

Approximately 45,000 cars drive along East Washington Avenue every day. There is an Auto Zone, an O’Reilly Auto Parts store, a used car dealership called Emblem Pre-Owned, a used car dealership called a Schoepp Motors Northeast, a Zimbrick Volkswagen of Madison dealership, a car mechanic called Jerry’s Garage, a Tires Plus, a Discount Tire, a Kwik Trip, and a Mobil gas station—all within a two-block radius. There is a Hy-Vee grocery store and an ALDI grocery store just south of the property. There is a Target store located a few blocks away.

As testimony at the Plan Commission hearing showed, Club Car Wash considers itself a “support service,” meaning its service is a convenience for cars that are already in the area using other existing retail and commercial facilities. Club Car Wash’s business model does not seek to increase vehicle traffic to a site. Rather, Club Car Wash seeks to locate in an area where there are already convenient, established destination retail uses. Club Car Wash selects locations that are in “trade areas” and wants to locate where there are already existing businesses where people are coming in their cars. Club Car Wash specifically seeks to locate near “destination retailers,” like grocery stores and gas stations, because people are already going to these locations, using their cars to do so. In the case of this particular property, there are “destination retailers” – referenced in the preceding paragraph – in abundance. This is why the site is appealing to Club Car Wash and why this location will remain appealing even with implementation of TOD District principles in the area. Further, the fact the proposed project would also house Club Car Wash’s regional offices/headquarters means the building will also function as an office for employees who will be working in the region. Club Car Wash’s use of the site as a regional office, in addition to a car wash, was apparently not considered, but is also fully compatible with the GETAP and Comprehensive Plan.

The Plan Commission ignored this evidence and concluded that simply because the use is a car wash it would bring more vehicle trips and traffic to the area, with cars spilling out of the site and/or idling on the site to such a degree that it impedes the normal and orderly development of the neighborhood. None of this is supported by evidence. The car wash is an allowed use, which will draw on the existing traffic in the area, which is plentiful. There is no basis to

conclude that the project will impede development or cause cars to spill off the property into the public right-of-way.

Conditional Use Approval Standard No. 7

The Plan Commission stated that the proposed application does not comply with Conditional Use Approval Standard No. 7: The conditional use conforms to all applicable regulations of the district in which it is located. In asserting this standard is not met, the Plan Commission pointed to the purpose statement of the TOD Ordinance, stating that it can't be met because the proposed car wash is a vehicle-only use, which does not support any other modes of transportation. However, the Commission's Staff Report notes that "Zoning has determined that this development would comply with the recently adopted [TOD] ordinance and staff note that the use is an allowable conditional use within this Zoning District." The Zoning division is charged with interpreting project compliance with the MGO, including the TOD ordinance and it specifically acknowledged that the proposed car wash complied with the TOD Ordinance. The Plan Commission ignored this, concluding instead that the proposed car wash does not meet TOD District requirements. This conclusion was based solely on the notion that a car wash is an automobile use, but, as noted, the TOD District does not bar automobile-related uses, roughly 45,000 cars drive by the site daily, and numerous auto-intensive uses currently exist in immediate proximity to the site.

The Denial Was and Is Arbitrary and Capricious

Club Car Wash meets, or will meet upon satisfaction of the conditions in the Staff Report, all CC-T regulations, all TOD regulations, and all other MGO regulations that apply to this project. Club Car Wash demonstrated this by substantial evidence. The Commission's denial lacks similar support; thus, this decision – if not reversed – is subject to challenge as "arbitrary, capricious, oppressive, [and] unreasonable." See MGO § 28.183(5)(b)9; Wis. Stat. § 125.12(2)(d); *Nowell v. City of Wausau*, 2013 WI 88, ¶ 48, 351 Wis. 2d 1, 838 N.W. 2d 852. See also *Reidinger v. Optometry Examining Bd.*, 81 Wis. 2d 292, 297–98, 260 N.W.2d 270 (1977) (overturning examining board's decision because it lacked a "logical rationale founded upon proper legal standards").

The denial fails to meet the "logical rationale" and "proper legal standard" requirements for numerous reasons, including:

- The Urban Design Commission approved the application.
- City Planning Division Staff recommended approval of the application.
- Applicant committed to complying with the conditions that were attached to the CUP. See Wis. Stat. § 62.23 (requiring approval under this circumstance).

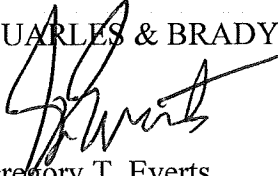
- Applicant's project is in a busy transit corridor—45,000 cars passing through daily—with no evidence that its operations, if allowed, would materially change the nature or transit mix of the neighborhood.
- Applicable ordinances call for mixed use, but one such use is auto-oriented use; there is no evidence to show or suggest the property would either (1) draw more traffic to the area rather than rely, as intended, on the substantial existing traffic, or (2) result in cars spilling over onto the public right-of-way.
- There is also no evidence this use of the property would hinder nearby Bus Rapid Transit; as noted, this property has no direct access to either East Washington Avenue or the BRT Station, and there are a multitude of auto-oriented businesses in the area currently.

IV. Conclusion

Club Car Wash respectfully requests that this matter be reviewed by the Common Council at the earliest opportunity—and that the Council vote to override the Plan Commission and approve this permit. The denial violates state law, as recently amended. It is erroneous, unfair, and arbitrary because it is based on supposition rather than evidence.

Very truly yours,

QUARLES & BRADY LLP



Gregory T. Everts

Counsel for Club Car Wash.

Enclosure:

Planning Division Staff Report by Chris Wells and Kevin Firchow, August 28, 2023

[Attachment A]

cc: Mike Haas, City Attorney
Chris Wells, Planning Staff
Kevin Firchow, Planning Staff