

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

Date: January 21, 2010

**MEMORANDUM**

TO: Members of the Common Council and Plan Commission

FROM: Michael P. May, City Attorney  
Anne Zellhoefer, Assistant City Attorney

RE: Legistar File No. 17101  
Amendment to 1965 Wisconsin Avenue Vacation Ordinance

Background

In 1965 the Common Council vacated a portion of Wisconsin Avenue north of Langdon Street, and reserved an easement over that vacated portion for the permanent benefit of the general public. The vacation and the reserved easement rights were provided for in an uncodified ordinance, which was subsequently amended by the Council in 1966, 1967, and 1971 (the "1965 Ordinance"). The 1965 Ordinance, as amended to date, and a copy of the vacation map are attached to this memo.

The 1965 Ordinance reserved to the City an easement over the vacated portion "to the extent reasonably necessary and appropriate to assure for the permanent benefit of the public" certain objectives, including public pedestrian access to and along the lakeshore, public pedestrian access to the top of any structure placed in the vacated street, the provision of public parking, and preservation of the view over Lake Mendota. Please see Section 2, paragraphs (1) through (14) of the attached 1965 Ordinance for a list of the easement and other rights reserved to the City over the vacated portion.

Upon vacation in 1965, ownership of the vacated portion of Wisconsin Avenue reverted to the owners of the abutting Edgewater Hotel. In the 1970's the Edgewater Hotel owners constructed an addition to the hotel in the vacated lands. The 1970's addition included a parking garage, hotel rooms and associated amenities, including a restaurant and ballroom. To comply with the 1965 Ordinance, the Edgewater owners provided access to the lakeshore, access along the lakeshore, and access to the rooftop of the 1970's addition for the benefit of the public. In addition, several one-hour public parking spaces were provided at street level as a part of the improvements.

Current Proposal and Necessary Ordinance Amendments

The Hammes Co. ("Developer") has submitted a request to redevelop and rezone the existing Edgewater Hotel property, including the area that was vacated in 1965 and is subject to the City's easement rights. In order to redevelop the property in accordance with the Developer's proposed plans, three provisions of the 1965 Ordinance must be

amended. We describe in detail below those three changes and the reasons therefor.

Paragraph (8) of the 1965 Ordinance requires the owner of the property to satisfy the objectives of Paragraphs (1) through (7) of the 1965 Ordinance at no cost to the public for “use, construction or maintenance.” This provision in Paragraph (8) means that all costs of providing public parking, public access to and alongside the lake, and public use of the surface of any improvement placed on the vacated portion is the sole responsibility of the owner, and no cost or liability is to be borne by the City of Madison. The Developer has requested that the City assist the project by providing a loan to the Developer through tax incremental financing. A portion of the loan proceeds would be used to fund the construction of those elements that were to be provided to the public at no cost, including public parking, public access to the lake, an improved view and public pedestrian access to the rooftop of the new structure to be placed in the vacated lands. In order to provide tax incremental financing for these improvements, the word “construction” must be deleted from Paragraph (8) of the 1965 Ordinance.

Paragraph (10) of the 1965 Ordinance requires the owner to comply with existing zoning and building ordinances setting forth yard requirements as to premises on the northeast and southwest sides of the vacated street portion in the same manner as though the street had not been vacated, but allowed buildings to encroach within ten feet of the vacated street. The Developer plans to construct a new building on the northeast side of the vacated street that will be less than ten feet from the vacated street. The Developer has submitted a request to rezone the property to Planned Unit Development District (PUD). The City’s Planned Unit Development District zoning ordinance, at Sec. 28.07(6), Madison General Ordinances, provides that there shall be no predetermined specific lot area, lot width, floor area ratio, yard or usable open space requirements, but that such requirements are to be made a part of the approved precise development plan agreed upon by the owner and the City. The proposed amendment to Paragraph (10) of the 1965 Ordinance is intended to replace the yard requirements with those currently allowed by the City’s Zoning Code.

Paragraph (12) of the 1965 Ordinance requires uniformity of ownership of the vacated portion of Wisconsin Avenue with the adjacent premises on either side. In its TIF application to the City, the Developer has suggested it may convert a portion of the redevelopment to a condominium form of ownership. Doing so would possibly lead to a portion of the premises on either side of the vacated street being owned by an entity other than the Developer. To allow for a future conversion of a portion of the redevelopment to the condominium form of ownership, the proposed amendment to Paragraph (12) would allow the Developer to sell a unit or units within a building adjacent to the vacated street as a condominium unit, provided that the Developer agrees to maintain the common areas. This change would allow for separate ownership of the vacated street from the adjacent property but would require that the entire development be maintained by the Developer.

Please let us know if you have any questions.

CC: Brad Murphy