

**From:** [Nathan J. Wautier](#)  
**To:** [Plan Commission Comments](#)  
**Cc:** [Stouder, Heather](#)  
**Subject:** Plan Commission Agenda Items 4 & 5 for Legistar File 11/23/20  
**Date:** Monday, November 23, 2020 2:57:49 PM  
**Attachments:** [image003.png](#)  
[Letter to Plan Commission - Transformational Rezoning for Milwaukee Street.pdf](#)  
**Importance:** High

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Plan Commission,

Please include the attached letter for the Plan Commission's review this evening related to Agenda Items #4 & #5. Also, the following individuals have registered to speak on these items for the property owners referenced in the attached letter and can hopefully be accommodated in this order:

1. Louis Weisman
2. Aimee Baumann
3. Nathan Wautier

Thank you,

Nathan

**Nathan J. Wautier**

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November 23, 2020

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SENT BY E-MAIL

City of Madison Director of Planning and Plan Commission  
Department of Planning & Community & Economic  
Development Planning Division

Dear Ms. Stouder and Plan Commissioners:                    Re: Transformational Zoning, Legistar Files  
61589 & 62174, and November 23, 2020  
Plan Commission Agenda Items 4 & 5  
(together, the “Proposed Ordinances”)

I am writing to you on behalf of my clients, Leo Ritter & Co., LLC and 3618 MF LLC, who separately own real estate at 3630-3650 Milwaukee Street (the “Amazon Facility”) and 3618 Milwaukee Street (the “Vacant Land”) in Madison, Wisconsin, respectively. As you are aware, the Amazon Facility began operating earlier this year following receipt of entitlement approvals from the City. The Proposed Ordinances have been introduced to reverse and eliminate these approvals and make the Amazon Facility both an existing non-conforming use and an existing non-conforming structure.<sup>1</sup>

The Staff Report that accompanies the Proposed Ordinances provides a non-exhaustive list of the negative impacts upon property owners of creating such non-conformities. For these reasons and the four additional considerations noted below, the owners of the Amazon Facility and Vacant Land oppose the Proposed Ordinances.

First, during public testimony and discussion tonight, we ask that you engage City Staff and Commissioner Sundquist,<sup>2</sup> to provide historical context regarding the very robust, and relatively recent, process taken by the City to consider and reject the use of widespread rezonings similar to the Proposed Ordinances. In brief, this issue (known as “transformational zoning”) was considered and rejected as

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<sup>1</sup> See Alder Foster’s email to Plan Commission dated October 19, 2020 which reads in relevant part: “As I have shared with staff, I believe these steps should become routine following any future adopted plans. When we fail to take these steps, we leave ourselves vulnerable to land uses that are not consistent with our plans, including the recent example of Amazon’s industrial use of what was hoped to be a thriving mixed use center.”

<sup>2</sup> My recollection is that only Commissioner Sundquist was a member of Plan Commission during the Zoning Code Rewrite process. However, Ms. Stouder, Mr. Parks, Mr. Firchow, and Mr. Tucker (among others) were all heavily involved.

part of the zoning code rewrite process that took place over an approximately four-year period (2009 through adoption in January, 2013).<sup>3</sup> Unlike the current attempt to change this long-standing policy, the public engagement and transparency of the zoning code rewrite process was extensive. If such an impactful City policy is to be changed, a committee similar to the Zoning Code Rewrite Advisory Committee should be formed and a series of public meetings should be held in order to once again fully understand the issue and related consequences before proceeding.

Second, as explained by City staff at the time, the long-standing and current City policy confirmed during the zoning code rewrite process is designed to rely upon the new mixed-used zoning districts to create as few existing non-conforming uses as possible when a property is rezoned while concurrently moving properties towards desired land uses recommended in the City's adopted plans. To that end, in responding to questions inquiring about the use of rezonings to achieve a result similar to the Proposed Ordinances, the planning division staff and zoning administrator noted in a memorandum dated October 4, 2010,<sup>4</sup> and entitled "Transformational Zoning" that while the zoning code itself provides transformational zoning concepts (e.g. building placement and design standards, automobile parking reductions, new requirements for surface parking lots, etc.) during the actual mapping process for the new zoning code:

- staff "will carefully take into account the Comprehensive Plan and other adopted plans, while making efforts to minimize the creation of nonconforming uses" and,
- it is staff's "intent to minimize ad hoc planning and "transformational zoning" decisions."
- While care will be "taken to preserve both existing land use rights and predictability with regard to what is and is not allowable." (emphasis added).

With the above as background, please again review the Staff Report related to the Proposed Ordinances generally and specifically the section discussing the use of CC-T as a district that is also consistent with the neighborhood plan. If a rezoning is to be approved, rezoning the entire Amazon Facility parcel to CC-T would allow the existing use to remain conforming, eliminate a split-zoned parcel, and also allow the high density residential use called for on the northern portion of the parcel.

Third, specific to the Amazon Facility and other commercial properties that would be similarly rezoned in the future. For the reasons noted in the Staff Report, such rezonings will greatly reduce the economic value of these properties. Put another way, the assessments of these commercial properties will have to be slashed to reflect the loss in entitlements. A reduction in assessments results in a corresponding increase in the City's mill rate and, when that reduction is exclusive to commercial properties, the

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<sup>3</sup> Note: An area-wide "downzoning" did take place in the Greenbush Neighborhood following these discussions but this downzoning from multi-family structures to single-family structures did not eliminate the existing residential uses and increased financing options by making the properties eligible for single-family 30-year home loans.

<sup>4</sup> My records identified three staff memorandums directly addressing questions about transformational zoning in 2010 alone and my notes have multiple additional discussion references at various public meetings.

increased mill rate translates into a larger share of the tax burden being placed on the City's residential properties.

Lastly, consider what a similar transformational rezoning of an existing residential property would mean to a homeowner. Among other things, it likely means that the homeowner is no longer eligible for a 30-year mortgage or residential mortgage rates. Creating such severe negative consequences for current property owners (whether they are commercial or residential) has already been determined to be bad policy following over four years of robust public discussion. We generally ask that you not overturn this important policy after only four weeks of relatively opaque reconsideration. We specifically ask that you either (i) recommend complete denial of the Proposed Ordinances, or (ii) place the Proposed Ordinances on file to allow for further discussion between Alder Foster, City Staff and the property owners.

Respectfully submitted for consideration,

A handwritten signature in black ink, appearing to read "Nathan J. Wautier", written in a cursive style.

Nathan J. Wautier