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Subject: Statement of Summit Woods Neighborhood Association opposing 4606 Hammersley
Development

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Alders of the Common Council,

Attached please find the Statement of the Summit Woods Neighborhood Association Opposing the Proposed Development at 4606 Hammersley Road.

This statement is offered in support of our appeal of the Plan Commission's decision approving the conditional use permits, which is agenda Item 9 (Legistar File #63304) for the Council's January 19, 2021 meeting.

Please take the opportunity to read our concerns before the meeting.

Thank you for your consideration.

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on behalf of the Summit Woods Neighborhood Association

STATEMENT OF SUMMIT WOODS NEIGHBORHOOD ASSOCIATION
OPPOSING PROPOSED DEVELOPMENT AT 4606 HAMMERSLEY ROAD

January 19, 2021 Common Council Meeting

Agenda Item 9 (Legistar File # 63304)

Appeal of Plan Commission's 11/23/20 Decision (Legistar File # 62600)

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A. According to the Plan and the City’s own equity data, what *should be* here is the “missing middle” of affordable housing, prioritizing 3- and 4- bedroom units for families. We would support such a development because our neighborhood lacks affordable family housing. 17

1. This development contains no 3- and 4- bedroom units, and 85% of the units are studios or 1- bedroom units. 17

2. Our neighborhood lacks 3- and 4- bedroom units for families, but we already have a large supply of studios, 1- and 2- bedroom apartments. 17

3. The City’s own equity data shows that our neighborhood is not affordable for low-income residents, demonstrating a need for affordable housing in our neighborhood. 18

B. According to the Plan and the GFLU map, what *should be* here is 50% medium residential and 50% commercial. We would support such a 50-50 mixed-use development because our neighborhood has been identified as a growth priority area for services, so that it can become a “complete” neighborhood. 20

C. According to the Plan, the development here should be context-sensitive, where building form is the primary consideration when determining whether the building fits appropriately within a neighborhood. We would support such a context-sensitive development because such a development would enhance, rather than detract from, our neighborhood aesthetics. 21

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SUMMARY OF THE NEIGHBORHOOD’S POSITION

We, the residents of Summit Woods Neighborhood Association, appeal the City of Madison Plan Commission’s November 23, 2020 decision approving conditional use permits, because we oppose proposed development located at 4606 Hammersley Road.

The Plan Commission failed to adequately explain its decision, as is required by the “substantial evidence” standards set forth in MGO § 28.183(6). There are few, if any, factual findings supporting the Plan Commission’s decision. The Plan Commission should not be able to ignore its own conditional use standards about safety, traffic, aesthetics, and more without explanation. This development is also inconsistent with what the City’s Comprehensive Plan has said is priority for this parcel, and is inconsistent with what the General Future Land Use Map has said is appropriate land use for this parcel. To the extent that the development is

non-conforming to what is expected and what is prioritized for the City, the Plan Commission was required to explain why. They did not, and we as taxpayers deserve an explanation. This Council should demand those explanations, or else there is no accountability in this process.

When this Council reviews our submissions to the Plan Commission and to this Council, it will be very clear that our neighborhood's voice was not adequately represented in this process. The Plan Commission basically rubber stamped the developer's plans and did not require the developer to include proof that he had met the conditional use standards and requirements, instead allowing him to say he would "look into it." This provides no real way for the neighborhood to be assured that the City will hold him accountable if he does not. In contrast, our neighborhood submitted extensive evidence demonstrating that a variety of conditional use standards had not been met, yet our extensive written input and public comments were largely ignored by both the developer and the Plan Commission. To the extent that the neighborhood voiced concerns and submitted contradictory evidence, the Plan Commission should have reconciled those factual differences on the record, with the kind of adequate explanation and fact-finding required by law, before approving the development. In the alternative, the Plan Commission should have placed the application "on file without prejudice" until those differences could be resolved, instead of approving the development outright as it did.

This appeal is not based on emotions or "not-in-my-backyard" sentiment. Our neighborhood would fully support responsible development on this parcel that includes affordable family housing and which is context-sensitive for our neighborhood in scale, scope, and design. Indeed, we support the kind of development that the City says that it wants, but that's not what this development is. The Plan Commission should not be allowed to approve, without explanation, a development that is inconsistent with the City's own priorities.

We have significant concerns that the Plan Commission should be required to address before this development is approved, and we are troubled by the lack of accountability throughout the City's process. Our neighborhood is united in its desire to have an appropriate development here, but this development, as it stands, should be rejected. We ask that this Council reject the application, or in the alternative, modify the Plan Commission's decision to account for our concerns before the development plan is approved.

I. The Plan Commission did not adequately explain its decision, nor was there "substantial evidence" that the conditional use standards had been met.

The Plan Commission did not adequately explain its decision, as required by law. We, as taxpayers, deserve an explanation as to what "substantial evidence" existed to show that the conditional use standards had been met. This Council, however, as the reviewing body of the Plan Commission's decision, will soon see that it cannot properly evaluate the decision,

because there are few, if any, factual findings. Rather, the Plan Commission appeared to base its decision on flawed assumptions, contradictory facts, or non-existing evidence.

A. The Plan Commission is required to render a decision based on specific findings of fact, but did not adequately explain its decision here.

Pursuant to MGO § 28.183(5)(a)(5), the Plan Commission is required to render a decision based on specific findings of fact. Pursuant to the Plan Commission’s own Policies and Procedures Manual (“Manual”), Legistar 22007, which is adopted as law pursuant to MGO § 28.183(5)(a)(1), it is the responsibility of the Commission to explain how it came to a determination. *See* Manual, p.15 (“Decision Making,” #3.) A simple statement that the “standards are met” is insufficient to inform the public of the reasons for the determination. *See* Manual, p.15. Absent adequate discussion of the required factors set forth in the ordinance, there is no basis for the public and this Council to conclude the Plan Commission considered those factors. *See Keene v. Dane County Board of Supervisors*, 2004 WI App 26, ¶¶ 5-6, 269 Wis. 2d 488 (Ct. App. 2003) (absent reference to factors, requirements in ordinance are not satisfied).

For example, the staff report indicates in cursory fashion that some conditional use standards had been met, but a review of the staff report quickly reveals that there very little discussion of what particular facts the Commission relied upon in making those determinations, and there was no explanation as to why or how the standards had been met in the face of conflicting evidence. As to other required standards, there was no discussion at all.

Perhaps more importantly, the Plan Commission failed to adequately explain its decision at the November 23, 2020 public hearing when it approved the plan. It appears that the Plan Commission approved this proposal based, in large part, on the need to create more housing in the City and the Commission’s assumptions about the proper land use for this parcel. But again, the Plan Commission failed to explain the facts underlying its decision, even in the face of contradictory or non-existent evidence.

1. There was no explanation or fact-finding about the City’s housing needs.

The Plan Commission indicated at the meeting that it was approving the development because the City “needs housing,” and also stated that the zoning “expects” development of this scale here, yet there was no explanation as to the facts underlying these determinations. As discussed extensively later, the City’s own Comprehensive Plan (2018), the General Future Land Use (GFLU) Map, and the Equitable Development Report (November 19, 2019) which shows the demographics of our neighborhood, all conclude that this is *not* the kind of housing that is needed here, yet there was no explanation from the Commission here that would account for the non-conforming uses and divergences from City priorities.

Also, as discussed later, the City clearly needs affordable housing, especially 3- or 4-bedroom units for families, but the Plan Commission failed to explain why we should “expect” the kind of development being proposed here in this particular location. There was no explanation why so many studio and 1- bedroom apartments were necessary in the design, when our neighborhood already has many apartments with those units. Importantly, there was no explanation as to why there were *no* 3- or 4- bedroom units in the design here, when the City clearly prioritizes and needs those family housing units.

2. There was no explanation or fact-finding about the City’s recommended land use for this parcel.

Our neighborhood does not have a specific land use plan or a sub-area plan, so the Plan Commission should have considered the City’s Comprehensive Plan and GFLU Map for our area to determine the appropriate land use for this parcel and for our neighborhood. As stated in the Growth Framework Section of the Plan (p. 17), the “GFLU Map is a *major consideration* when reviewing the appropriateness of proposed development” (p. 17, emphasis added).

Here, as correctly noted by the Plan Commission, the City’s recommended land use for this property under the GFLU Map is mixed use, with 50% designated as commercial use (west side of the parcel) and 50% designated as medium residential use (east side of the parcel). However, there was no explanation from the Plan Commission as to why only a fraction of the proposed development here, approximately 7% of the parcel (1,757 square feet out of 32,354 total), was designated as commercial space, rather than 50%. Further, there was also no explanation as to why that small commercial space is located on the east side of the parcel, instead of locating it on the west side of the parcel where a smaller building form would help transition the large building to step down to the residential area to the north.

Far from mixed use, the developer’s plan here is designed to be a high-density residential development with 53 apartments. To the extent that the Plan Commission believes that a deviation from the GFLU Map is warranted here, however, there was no explanation or fact-finding from the Plan Commission justifying this deviation, as is required.

3. There was no explanation or fact-finding about the reliance on a zoning designation that is inconsistent with the street’s actual configuration and uses.

As correctly noted by the Plan Commission, Hammersley Road is zoned Commercial Corridor-Transitory (CC-T) and the neighborhood recognizes that the zoning for this parcel is not technically at issue on this appeal. Nonetheless, we find troubling that the Plan Commission relied on this auto-oriented zoning designation in approving the design here without explanation. Such reliance is misplaced and warrants further explanation because the Hammersley Road in our neighborhood is no longer auto-oriented or commercial.

It is unclear why Hammersley Road in our neighborhood is still zoned CC-T, but the CC-T zoning designation is likely an outdated remnant from when the Hammersley Road used to be Beltline exit. In other words, traffic could directly exit from the Beltline onto Hammersley (*e.g.*, to access the old post office). Even before that, before the Beltline existed, “our” Hammersley Road was connected to the “other” Hammersley Road which is now on the other side of the Beltline, ending at Elver Park. Thus, when it was zoned, Hammersley might have been considered a major or commercial thoroughfare at one point in time.

Now, however, “our” Hammersley Road in our neighborhood is neither an auto corridor nor a commercial corridor. For example, Hammersley no longer connects to the Beltline and now dead ends at Pontiac Trail. As the Plan Commission even noted, Pontiac Trail is “not what you would expect” in an urban neighborhood. It is the only thoroughfare through the neighborhood (approximately 6 blocks or 0.4 miles long), yet it is very narrow (around 20-21 feet wide), and is a rural road with no curb, gutter, or sidewalks. There is no parking on Pontiac during the week, as there is barely enough room for two cars to pass each other.

As to Hammersley itself, cars that travel on Hammersley are generally going one of three places: 1) the commercial properties at the intersection of Hammersley and Midvale (*e.g.*, Dorn Hardware); 2) St. Mary’s Home Health, which is the only commercial property past the Midvale intersection; or 3) into our neighborhood, either to access the housing on Hammersley itself or to access the main part of our neighborhood via Pontiac Trail. Aside from Home Health, the rest of Hammersley has no commercial properties and contains only multi-family units (*i.e.*, medium-residential) and single family homes (*i.e.*, low-residential).

Therefore, the current CC-T zoning designation used for large, auto-oriented corridors is largely misleading based on how Hammersley Road is actually configured and used. The development was described at the hearing as a necessary “delineation” between the auto-oriented commercial corridor and the residential area to the north, but there is actually no need for this so-called “delineation” here. Hammersley can hardly be considered auto-oriented or commercial. As explained extensively below, the context of the neighborhood here seems to call for a development of much lesser scale. The Plan Commission concluded that we should “expect” a large development here, given the auto-oriented zoning designation, but there was no acknowledgement from the Plan Commission that this road is no longer used in this way.

4. There was no explanation or fact-finding about required aesthetics standards or about context-sensitive development.

Further, the Plan Commission said in its decision, in essence, that the design was beautiful and attractive, but there was no explanation as to what exactly was beautiful about it. Moreover, although beauty may be subjective in the eye of the beholder, beauty is not the correct standard here. Instead, both the conditional use standards and the Comprehensive Plan’s requirements for in-fill developments require appropriate aesthetics within the context of the existing neighborhood, yet no such explanation was forthcoming.

As will be discussed later, there was no explanation why the building form needed to be so big, so tall, so modern, and so close to the sidewalk (*e.g.*, 3 stories instead of 2, commercial set-backs instead of residential, modern instead of traditional). There was no explanation as to why the developer could not have modified the design to be more consistent with our neighborhood full of 1950's one-story ranch homes and small, brick multi-family duplexes and 4-plexes.

5. There was no explanation or fact-finding about noise mitigation or sustainability.

The Plan Commission also said that it “liked” the building because it would serve as a “buffer” between the Beltline noise and the neighborhood, but there was no explanation as to why such a sound buffer is currently needed. Indeed, the City previously declined to put a sound wall in the same location, because there were insufficient numbers of residents living nearby.

The proposed 53 units here, however, will add 60+ residents to our neighborhood, so there may actually be a need for noise mitigation. At the hearing, Alder Rummel even questioned the developer about those concerns, yet the Plan Commission provided no explanation or fact-finding as to whether or how that noise abatement would be accomplished for the residents who will actually live there in the future. We, as considerate neighbors, do not want the new tenants to be subjected to that noise pollution and become the sound buffer for the rest of the neighborhood, especially when many of us have been living for years without a sound wall there.

The Plan Commission also implied that sustainability standards had been met, but there was no explanation as to why there is virtually no green space or a rain garden in a known flooding area that is subject to a flood mitigation plan. This building form takes up around 75% of a large block-long parcel, with very little room to spare between the building and the street. Yet there was no explanation as to storm water drainage, snow removal, or garbage pickup.

6. There was no explanation or fact-finding about safety or traffic.

The city's traffic engineering staff has told us that the visual triangles are not adequate here because the sight lines will be impaired with a building that large, given the placement of the building on the lot and the placement of the current stop signs. Yet disturbingly, there was no explanation supporting why the visual triangles were allowed to be disregarded on the plan. There was no explanation why visual triangle waivers were not required to be obtained, even though clear evidence exists that those sight lines are inadequate for safety.

Unlike many in-fill developments where vision triangle waivers may be required because sight lines are necessarily impaired from existing buildings, there is no need for this new construction to be this close to edge of the property, with inadequate vision triangles, on a vacant lot. Those vision triangle and sight lines could have easily been incorporated into the

design, yet there was no explanation as to why this was not required to be changed before approval of the plan. This intersection contains a large number of bikers and pedestrians who enter the Southwest Bike Path at the Hammersley spur, but there was no explanation as to how vehicles would be able to see those bikers and pedestrians without encroaching into the intersection itself, creating a safety risk.

There was also no explanation as to why the Plan Commission was allowed to rely on the developer's traffic study, when the neighborhood presented evidence contradicting that study's underlying assumptions, as discussed later. There was no explanation as to how Pontiac Trail—a small, rural road with no curb, gutter, or sidewalk—could absorb the additional 60+ cars added to our neighborhood, either in infrastructure or traffic flow. There was no explanation as to why this development was approved without first knowing whether the Pontiac Trail reconstruction project would be approved, or without knowing how the safety of pedestrians and bikers in our neighborhood—21% of whom are children—would be protected.

B. The Plan Commission did not hold the developer accountable to his burden of proof in showing that there was “substantial evidence” that the conditional use standards had been met.

We recognize that the planning process contemplates that some of these details might be worked out later with the City's other departments. However, in the face of substantial neighborhood concerns and contradictory evidence presented to the Plan Commission, the Plan Commission should not have approved this plan without first being required to explain how those particular concerns would specifically be addressed by the developer. The developer is required by law to show “substantial evidence” that all of the conditional use standards have been met, and the Plan Commission must make decisions based on the standards and the evidence before the body. *See Manual*, p.15 (“Decision Making,” #3.)

Here, however, the developer did not meet this “substantial evidence” burden. The neighborhood presented voluminous evidence to the Plan Commission that contradicted the developer's contentions, yet the Plan Commission did not explain how it reconciled our evidence with the developer's. Nor did the Plan Commission require substantial evidence from the developer supporting the conclusory assertion that the standards have been met, instead relying on the developer's mere promises that those standards would eventually be met. But contradictory evidence is not substantial evidence; and no evidence is not evidence at all.

1. Substantial evidence does not exist that Standards 1 and 6 (safety and traffic) had been met.

Standard 1 of the conditional use ordinance requires that the conditional use will not be detrimental to or endanger the public health, safety, or general welfare. Standard 6 requires that measures will be taken to provide adequate ingress and egress, and be so

designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow.

For Standards 1 and 6 (safety and traffic), the neighborhood presented evidence contradicting the assumptions made by the developer's traffic study. This evidence is contained in the neighborhood's submissions to the Plan Commission and in our public comment, and will not be repeated here, but some relevant examples warrant emphasis.

For example, although the developer asserted that "most people" would not use Pontiac Trail as a "cut through," we presented evidence that the developer's traffic study, using COVID-19 traffic patterns, vastly underestimated the number of cars that normally travel that way. The study also failed to account for ingress at Yuma and Midvale at all, yet we know that cars routinely travel that way when approaching the neighborhood from the north. This failure was categorized as a "hole" in the traffic study, but was allowed to be left entirely unexplained by the developer.

The traffic study also concluded that only 21 cars will be added to the morning traffic egressing at Hammersley, yet it is not realistic to draw this conclusion when there will be at least 53 cars added to our neighborhood. The level of service at the intersection of Hammersley and Midvale will rapidly decrease to an "F" based on the true pre-COVID traffic flow there.

Similarly, the developer concluded that there was a "decrease" in traffic now on Hammersley compared to past developments. In making that assertion, however, the developer relied on decades-old data from when the old post office was at that location, nearly 30 years ago (*i.e.*, when Hammersley was still accessible directly from the Beltline). We also discussed our concerns that Pontiac Trail would likely become unsafe for pedestrians and bikers with 53+ added cars in the neighborhood, and showed how there will be inadequate sightlines at an intersection where many bikers and pedestrians access the bike path. The sight lines there are already problematic even with a vacant lot.

As noted above, the city's traffic engineering staff has told us that the visual triangles are not adequate in the plan, because the sight lines will be impaired with a building that large, given the placement of the building on the lot and the placement of the current stop signs. Figuratively speaking, the developer "cut corners" in this plan, but this is one place where the developer should have literally "cut a corner" off of the building for safety.

These safety concerns were not addressed by the developer at all, yet it was his burden to show substantial evidence of safety. It is not the neighborhood's burden to show substantial evidence of dangerousness, yet our safety concerns were seemingly disregarded.

2. Substantial evidence does not exist that Standards 3 and 9 (uses and aesthetics) had been met.

Standard 3 of the conditional use ordinance requires that the uses, values and enjoyment of other property in the neighborhood will not be substantially impaired or diminished in any foreseeable manner. Standard 9 requires that the project create an

environment of sustained aesthetic desirability compatible with the existing character of the area and statement of purpose for the zoning district.

For Standards 3 and 9, we presented evidence of how the development would negatively impact the surrounding properties based on overwhelming building mass shade, insufficient parking, urban canopy destruction, and noise. As discussed later, we also presented evidence that the proposed land use here is inconsistent with the City's own GFLU Map and priorities for context-sensitive development set forth in the Comprehensive Plan.

We also presented evidence that the transitional elements were not sufficient, given that the step-backs were still very close to the surrounding residential properties. We also have concerns that the 4-story tree, one of the major transitional elements the developer relied upon, is unlikely to survive. The tree is very close to the road and the underground parking may disturb the tree's root structure so close to the perimeter of the property. In the face of this concern, the developer should have been required to show substantial evidence that the tree will survive the construction, given that the Plan Commission allowed the developer to rely upon the tree as a major transitional element. Without evidence or proof that the tree will survive (*e.g.*, from the Urban Tree Alliance or the city's forestry department), that tree cannot constitute substantial evidence of a transitional element to the lower residential area only a few feet away.

The Plan Commission accepted, without discussion, that the developer's step-backs and landscaping plan constituted substantial evidence of sufficient transitional elements for aesthetics, even though our neighborhood presented evidence that those transitional elements would not be sufficient. The Commission also accepted the developer's evidence as to traffic flow and safety, even though we presented contradictory evidence. As to a variety of other required conditional use standards, there was no evidence or discussion at all. To the extent that the Plan Commission accepted that the plan contained substantial evidence that the standards had been met, however, the law still requires adequate explanation as to why.

3. Accepting the developer's word, without proof or accountability for non-compliance, does not constitute substantial evidence that the developer met his burden of showing that that the conditional use standards had been met.

The Plan Commission also posed several questions of the developer, but seemed to accept the answers without concrete proof or facts, and without regard for whether the developer would actually follow through. For example, when the question was raised about noise abatement, the developer replied that they were "aware of" it and they wanted to "fix it." There was no substantial evidence, or even any proof at all, as to what this noise mitigation would be.

Similarly, the Plan Commission seemed to accept, without question, the developer's contentions that he would incorporate an "exhaustive" list of sustainability recommendations, such as solar on the roof, but those recommendations are not currently contained in the plan.

Upon being questioned about electric vehicle charging stations, the developer stated that he was “looking into” it. Without proof, though, the developer’s pledges are a far cry from “substantial evidence,” as they are not actually contained in the developer’s plan. We are further concerned that there appears to be no mechanism to enforce these promises if the developer breaks them.

In short, we believe that this developer’s application lacks the “substantial evidence” required for this conditional use permit to be approved. To the extent that the neighborhood presented contradictory evidence, the Plan Commission was required to reconcile that evidence by explaining why it believes substantial evidence still existed of the standards, notwithstanding that contradictory evidence. Zoning and conditional use factors are rendered meaningless if the Plan Commission can simply consider other factors that it wants to consider, instead of considering and explaining the factors it is supposed to consider. *See Keene v. Dane County Board of Supervisors*, 2004 WI App 26, ¶¶ 9-10.

II. Our neighborhood’s voice was not adequately represented in this process.

When one compares the neighborhood’s concerns submitted to the Plan Commission’s decision, it becomes clear that the Plan Commission basically rubber stamped the developer’s plans and our neighborhood’s concerns were largely ignored.

A. Neighborhood voice should not be merely “performative,” but is critical to responsible development.

The City’s Comprehensive Plan accurately notes that most people “interact with the urban environment based on *what buildings look like and how large they are*,” such that “[h]eight, [building] form, placement of entrances, and the distance between buildings of different scales often best prescribe how new development will fit into the surrounding context” (p. 51). The Plan thus requires that the Plan Commission account for neighborhood voice and input (p. 50). Such input not only reduces the amount of neighborhood opposition, which can be a barrier to development, but also ensures that the redevelopment can “integrate well with its surroundings through context-sensitive design and scale” (p. 50).

In addition, engaging residents helps foster the City’s goal of becoming more “equitable, inclusive, and meaningful,” particularly if such engagement targets underrepresented populations” (p. 110). It is the City’s “responsibility to build positive relationships, engage with, and support civic responsibility” (p. 110). Public participation ensures that “meaningful input will bring the voices of residents into decisions earlier” (p. 110).

In short, neighborhood voice is critical to responsible development. Our City is nothing but a collection of neighborhoods. The City and its committees should “respect the wishes of neighborhoods in the planning process and not simply roll over them like an armored vehicle.

Begin and end with neighborhoods, not committees” (p. 50). Here, however, we feel that our neighborhood’s voice was not adequately represented in this process.

B. Our neighborhood’s primary concerns were largely ignored by the developer and by the Plan Commission.

1. It is misleading to conclude that the developer made “concessions” based on neighborhood input when those modifications were minor.

In approving this plan, the Plan Commission appears to have relied upon the misleading assertion that the developer made “concessions” that largely addressed neighborhood concerns. It is true that the developer and our alder met with the neighborhood during the pre-application phase. It is also true that the developer made minor modifications to the plan, based on neighborhood input. But it is misleading to assert, and disingenuous to conclude, that the developer’s modifications were true concessions.

For example, the developer’s original plan had 55 units, and the “concession” to the neighborhood was that it now includes 53 units (*i.e.*, 2 fewer units than before). This modification, however, did not truly address the neighborhood’s concerns that this development was too dense for our neighborhood to absorb, as discussed later.

Similarly, the original plan also had very little, if any, surface parking for the commercial space and an inadequate number of underground parking stalls. Indeed, originally, there were fewer parking stalls than number of units. Based on the neighborhood’s concerns, the developer increased the number of underground parking stalls to include sufficient parking for the number of residents plus a small underground lot for commercial parking. But it is a stretch to call it a “concession” to have enough parking stalls for each unit. We also do not consider this much of a “concession” when the developer currently charges his tenants for parking at his adjacent property, suggesting that he might charge for parking at the proposed development. If any of the new tenants do not want to pay for parking, they will park on the street. The neighborhood submitted evidence showing there is already insufficient parking nearby, and we have reason to believe that at least some of the future tenants will park on the street, given that they might be charged extra for underground parking.

While the neighborhood does appreciate the modifications made during pre-development, our primary concerns were left unaddressed by the developer—density, height, safety, traffic, parking, aesthetics, transitional elements, shade, noise, set-backs, green space, and more.

2. It is misleading to conclude that the neighborhood felt heard and supported when the neighborhood’s primary concerns were left unaddressed.

As discussed later, the vast majority of our neighborhood supports responsible development for this parcel, and we believe there are many potential positives to having this parcel developed, especially if an appropriate commercial space is included. As acknowledged at the Plan Commission meeting, there were also some neighbors that supported the design, as is.

As also acknowledged at the meeting, however, we submitted “a lot of analysis” and put much “thought into our documentation,” but much of that documentation was undiscussed and unaddressed, or worse, was intentionally disregarded. It is therefore misleading to conclude that the neighborhood felt heard and supported on our major concerns. Our alder even told the Plan Commission that the majority of the neighborhood’s primary concerns were left unaddressed to the extent that “many residents wanted,” such as:

- The “big thing” which was size of the building and number of units
- The “hole” (or holes) in the traffic study
- The “impact of parking” which was “different” than other developments that the Plan Commission was considering
- The architecture which was “not fitting,” given the “big time difference in style”

Those conclusions about our concerns were accurate, given the evidence that we submitted to the Plan Commission, including that:

- Almost 90% of neighborhood residents surveyed believed that this development would cause traffic problems on Hammersley Road and Pontiac Trail (Standard 6)
- Almost 85% believed it would negatively impact neighborhood safety, due to increased traffic on Pontiac Trail (Standard 1)
- Almost 84% of neighborhood residents surveyed believed that this development would negatively impact the feel, identity, and aesthetics of the neighborhood (Standard 9)
- Almost 87% believed it would negatively impact availability of on-street parking, particularly on Heritage Circle (Standard 3)

3. The vast majority of our neighborhood still opposes this development as it stands, yet there was very little opportunity for our voices to be heard before the decision was made, after midnight, at the Plan Commission hearing.

We also find it troubling that, in a public hearing, our agenda item #18 did not come up until almost 11:30 at night, nearly 6 hours into the Plan Commission meeting. Given the “organized opposition” to this proposal (*see* p. 12, Plan Commission Manual) and the extensive paperwork we submitted to the Commission, the Commission should have tabled our agenda item until a later meeting so more of our neighbors could attend and provide meaningful input. Based on the record of the meeting, it seemed that our paperwork had not even been read by some commissioners, let alone meaningfully considered, before the Plan Commission made its decision.

Regarding actual notice to residents, the developer submitting the plans here also happens to own a large apartment property (28 units) within 200 feet of the development. In other words, one of the property owners entitled to actual notice of the hearing was the developer, such that actual notice of the public hearing may not have been adequately effectuated to tenants therein who opposed the development. Indeed, the vast majority of the 11 people who registered in support of the measure were either: 1) associated with the developer; 2) the developer's employees; or 3) unknown individuals that did not live anywhere near our neighborhood.

In contrast, there was significant neighborhood opposition to the proposal. Many neighbors submitted public comment and extensive documentation before the hearing. After the decision was made, we quickly garnered the support of over 100 residents for our appeal, many of whom were unaware of the hearing itself, even though we tried to get the word out as best we could.

At the hearing, it is also concerning that some of the neighbors who registered to speak in opposition to the proposal were not actually able to attend, because of the late hour of the agenda item. Those who did remain presented about 15 minutes of neighborhood input, at nearly 11:45 at night. The Plan Commission then engaged in very little discussion of the neighborhood's input, only asking questions and discussing the matter for approximately 10 minutes before a motion was made and seconded to approve the conditional use permits. Our alder then spoke for about 5 minutes before the Plan Commission voted and unanimously passed the measure at about 12:15 in the morning.

In short, we are concerned that the Plan Commission failed to render an informed decision based on the evidence before the body, and prejudged the facts in the developer's favor, in violation of its own policies and procedures which require integrity and lack of bias in its decisions. Indeed, the failure to adequately consider the neighborhood's input at the public hearing creates an impermissibly high risk of bias, appearing as though the Commission had prejudged the facts in the developer's favor. *See Keene v. Dane County Board of Supervisors*, 2004 WI App 26, ¶¶ 13-14. Similarly, the Plan Commission's substantial reliance on input from people that benefit from the project creates the appearance of bias, if not actual bias, rendering the decision improper. *Id.* ¶¶ 15-16.

C. Our neighborhood has concerns that the Plan Commission is frequently approving conditional use permits throughout the city, despite widespread neighborhood opposition.

While not directly related to this appeal, the neighborhood has uncovered city data demonstrating a potential pattern and practice of the approval of conditional use permits for multi-family unit dwellings throughout the City without the required substantial evidence that those conditional use standards have been met. We looked at City data for conditional use applications for multi-family dwellings from the past year (2019-2020), and discovered widespread neighborhood opposition in all of the proposals that were approved, with very

little, if any, discussion of that opposition in the Plan Commission’s decisions. Yet despite widespread neighborhood opposition, nearly 90% of all conditional use permits were approved for those multi-family unit dwellings.

We also discovered that, of the approximately 35 approved multi-use proposals that required conditional use permits, about 54% (19 of them) were designed by the same architect, and that architect hires the same company for all of their traffic studies. It’s no wonder that very similar building plans are cropping up all over the city. We also find it troubling that the City is not engaging in independent traffic studies, but is allowing traffic studies sanctioned and paid for by the developers. Even more troubling, only one of the 35 proposals specifically mentions affordable housing and only four 3-bedroom units were included among all 35 proposals. As extensively discussed below, this is in direct contrast to the City’s stated priorities to support and build affordable family housing throughout our city.

III. Our neighborhood would support a development that is consistent with the City’s Comprehensive Plan and the General Future Land Use Map, which prioritizes affordable family housing, but this development does not follow the Plan, nor is it context-sensitive for our neighborhood.

As already noted above, the “GFLU Map is a *major consideration* when reviewing the appropriateness of proposed development” (p. 17, emphasis added). Although it is not the only consideration, the GFLU Map “should not be used outside of the context of the rest of the [Comprehensive] Plan.” Thus, in order to guide future development, City staff must “refer to other Elements” of the Plan before determining “whether development is appropriate for a given parcel” (p. 17).

Here, the Commission failed to include, account for, and abide by the Plan’s recommendations for this parcel, and also failed to refer to other elements of the Plan to determine whether the development was appropriate here. The Plan makes clear that this parcel: 1) should prioritize the “missing middle” of affordable family housing prioritizing 3- and 4- BR units for families; 2) should be 50% medium residential and 50% commercial; and 3) should be context-sensitive for our neighborhood. *Our neighborhood would support such a development*—one that is context-sensitive in scale and scope and one that prioritizes affordable 3- and 4- bedroom units for family housing—but *that’s not what this development is*.

A. According to the Plan and the City’s own equity data, what *should be* here is the “missing middle” of affordable housing, prioritizing 3- and 4- bedroom units for families. We would support such a development because our neighborhood lacks affordable family housing.

1. This development contains no 3- and 4- bedroom units, and 85% of the units are studios or 1- bedroom units.

According to the Growth Framework in the City’s Plan, neighborhoods should be developed with a “variety of price points, including housing affordable for people or families who make less than the county median income” (p. 20). Throughout the Plan, numerous times, the City makes clear that “[m]ulti-family residential development should contain a mixture of unit sizes, *including three bedroom (or larger) units*” (p. 20, emphasis added; *see also* pp. 22, 49, 51).

The Plan further makes clear that the “provision of two- and three-bedroom units to accommodate families with children should *remain a priority*” (p. 51, emphasis added). The “missing middle” should also be prioritized, including a “variety of building types,” such as row-houses, 2-, 3-, and 4- unit buildings, tiny homes, [and] bungalow courts,” along with live-work buildings or multi-family dwellings above shops (*id.*).

Our neighborhood would support a development with affordable 3- and 4- bedroom units for families. Here, however, there are *no 3-bedroom units* in the plan. There are also *no 4-bedroom units*. Of the 53 units proposed, only 8 are 2-bedroom (15%). The other 45 units (85%) are studios or 1-bedroom units. This development’s allocation of units is in direct conflict with the City’s stated priority for affordable family housing.

2. Our neighborhood lacks 3- and 4- bedroom units for families, but we already have a large supply of studios, 1- and 2- bedroom apartments.

According to strategies set forth for the Neighborhoods and Housing Framework in the Plan, the City should “support development of a *wider mix* of housing types, sizes, and costs throughout the city” (p. 49, emphasis added). There is widespread recognition that “a mix of 2, 3, and 4- bedroom units for families with children need to be thoughtfully included in addition to the *large supply* of studio and 1-bedroom units currently built in multi-family buildings” (*id.*, emphasis added). The Plan also calls for a “broad range of housing types and price levels within neighborhoods” in order to foster “daily interaction among people of diverse ages, races, and incomes, thereby building a sense of community across social groups” (*id.*).

Our neighborhood lacks sufficient 3- and 4- bedroom units for families, but just as elsewhere in the City, our neighborhood already has a “large supply of studio and 1- bedroom units.” In short, there is no evidence that we need more of the smaller units.

Approximately 197 apartment units already exist in our neighborhood within a 0.25 mile radius, and the vast majority of units are studio, 1- and 2- bedroom units:

- 4517 Hammersley Road (large development; Nakoma Commons)
 - 77 units (23 studios, 46 1-bedroom units, 8 2- bedroom units)
- 30 & 32 Heritage Circle (owned by Ripple, same developer that is applying here)
 - 28 units (all are studio, 1- or 2- bedroom units)
- 10, 16, 20, 22, and 28 Heritage Circle (4-plexes; owned by Becker)
 - 40 units total (2- bedroom units)
- 1301, 1302, 1305, 1306, 1310, 1313 Jewel Court (4-plexes)
 - 24 units total (2- bedroom units)
- 1309 & 1314 Jewel Court (duplexes)
 - 4 units total (2 units in each duplex) (each are 3- bedroom units)
- 1206, 1210, 1214, 1218 S. Midvale Blvd. (4-plexes)
 - 16 units total (2- bedroom units)

We need more 3- and 4- bedroom units for families, not more studio, 1- and 2- bedroom units, as is contained in this proposed development.

3. The City’s own equity data shows that our neighborhood is not affordable for low-income residents, demonstrating a need for affordable housing in our neighborhood.

As the City is aware, one of the “most important issues identified by Imagine Madison participants was the need for housing that is affordable to low and moderate-income households” (p. 46). Our neighborhood also needs affordable family housing.

According to the City’s Equitable Development Report (November 19, 2019) (“equity data”), the following data represents the demographics, housing types, and housing prices of our neighborhood, Summit Woods.

Demographics:

- Current: 14% persons of color
 - Concentration of poverty: 4% below poverty level
- Demographic changes observed between 2000-2010 (*i.e.*, before Great Recession):
 - 2.4% increase of persons of color (2000-2010)
 - Double Madison’s average of 1.2% increase of persons of color (2000-2010)
 - *I.e.*, in general, before the Great Recession, people of color were moving into our neighborhood at double the rate of Madison as a whole
- No demographic changes observed between 2010-2017 (*i.e.*, after Great Recession)
 - *I.e.*, in general, people of color have not moved into our neighborhood since the recession (2010-2017)

Housing Types:

- Current: 21-23% rental
- Housing types changes observed between 2000-2010 (*i.e.*, before Great Recession):
 - 10.7% decrease of rentals units
 - More than double Madison’s average of 4.4% decrease in rental units
 - *I.e.*, in general, before the Great Recession, our neighborhood showed a greater increase in owner occupancy in housing than the city as a whole
- Housing types changes observed between 2010-2017 (*i.e.*, after Great Recession):
 - 1.3% decrease in equitable development
 - Significantly less than Madison’s 0.1% *increase* in affordable housing
 - *I.e.*, in general, after the Great Recession, our neighborhood has seen a decrease in affordable housing, even though affordable housing in the city as a whole has increased

Housing Prices (Owned):

- Summit Woods median home value
 - Per equity data, \$362,650 (but likely skewed high by Nakoma’s housing prices)
 - Per city assessor data, around \$258,000-282,000 median home value
- Between 2010-2017 (after the recession), median home values have appreciated 14-19%
- City’s gentrification analysis:
 - Considered an “accelerating tract” (affordable but seeing high value growth)
 - Considered “historically high” or “adjacent”
 - *I.e.*, our neighborhood is not identified as being susceptible to gentrification or displacement of low income residents, but that is likely because housing in our neighborhood is already out of reach for most low income residents

Housing Prices (Rental):

- Current Summit Woods median rent: \$998/month
 - Around the same median rent as Madison (\$1,008) and Midvale Heights (\$1,053)
- Summit Woods median rent change (2000-2017):
 - 39% increase (considered “accelerating”)
 - Almost double the rent increase of Madison’s overall 19% increase
- Affordable housing is considered 30% of income
 - Here, to afford \$998/month in rent in Summit Woods, one would need an income of \$3,326/month (net)
 - *I.e.*, one would need to make \$39,912/year (net) to afford rent in our neighborhood, such that rents in our neighborhood are largely unaffordable to low income residents without public subsidies

Thus, there is a clear need for affordable housing in our neighborhood. As the City’s own equity data makes clear, our neighborhood has become largely unaffordable for low income families, and our neighborhood has not seen any recent development prioritizing low income housing or even family housing.

Yet, disturbingly, the Plan Commission did not require the developer to prioritize low income housing—or even any family housing—in this development. The Commission did not even ask the developer to pledge that he would provide affordable housing, and the developer presented no evidence that this development would be affordable. To the contrary, the developer told our neighborhood that the development would charge “market rates” for rent, and he would only rent his property to the “best tenants.” Further, as already noted, this developer also charges his current tenants (in the building next door) for parking, suggesting that the developer would also charge the future tenants for parking.

As the City makes clear in the Plan, it must “support the distribution of affordable housing throughout the City” (p. 52). To do so, it “must strive to maintain the quality of life in existing neighborhoods while avoiding exclusionary practices that lead to segregation by income and race” (*id.*) To not require the developer here to include affordable family housing in this new development is inconsistent with what the City wants to do.

B. According to the Plan and the GFLU map, what *should be* here is 50% medium residential and 50% commercial. We would support such a 50-50 mixed-use development because our neighborhood has been identified as a growth priority area for services, so that it can become a “complete” neighborhood.

Our neighborhood believes that the 50-50 mixed-use development allocation that the Plan designates for this property makes sense, and we would support that kind of responsible, appropriate in-fill development. The Plan (p. 16) and the GFLU map have identified our neighborhood as a “transitioning center.” Thus, the City has already determined that this area’s focus should be a transitioning into a “vibrant” mixed-use “Activity Center” (p. 15). In short, the City believes a 50% mix of commercial is needed here so we can become a “complete” neighborhood where residents can have access to “resources needed for daily living” (p. 46, p. 48).

We agree, and would support a 50-50 mixed use here, as it would provide more walkable services in our neighborhood, thereby leading to better outcomes for all residents (p. 52). We already have walkable access to transit, schools, places of worship, and parks. We already have stable, quality, single-family housing. We have low crime. We also have the fabulous Southwest Bike Path right in our backyards.

Yet we do *not* have many other amenities nearby, such as childcare, civic spaces, live-work spaces, small businesses, restaurants, or healthy food options, without having to rely on automobiles for every trip (p. 48). We need “convenient, walkable access to transit, shopping, restaurants, and other amenities” (p. 21). We need to “equitably locate” these resources and amenities here on this parcel, to give us more “convenient choices” in our “established residential area currently lacking amenities within walking distance” (p. 52).

Inexplicably to us, though, and unexplained by the Plan Commission, only a fraction of the proposed development on this parcel (about 7%, or 1,757 square feet of 32,354 total) is designated as commercial space. As already discussed, the Plan Commission indicated that we should “expect” this kind of high-density residential development here, but did not explain why. In reality, based on the City’s own recommendations and needs, we believe we should actually “expect” 50% of this parcel being devoted to the commercial space needed in our neighborhood, not just a 7% “token” commercial space.

We would support a 50-50 mixed use development that would enhance our neighborhood and provide needed services, but that is not what is currently being proposed.

C. According to the Plan, the development here should be context-sensitive, where building form is the primary consideration when determining whether the building fits appropriately within a neighborhood. We would support such a context-sensitive development because such a development would enhance, rather than detract from, our neighborhood aesthetics.

1. Our neighborhood would support a development with a building type that is context-sensitive for our neighborhood.

In order to guide future development, the City’s planners must “refer to other Elements” of the Plan in determining “whether development is appropriate for a given parcel” (p. 17). Any “infill or redevelopment” that occurs near a low residential area, such as ours, also “should be compatible with established neighborhood scale” (p. 20).

Indeed, as the Plan accurately notes, most people “interact with the urban environment based on *what buildings look like and how large they are*,” such that “[h]eight, [building] form, placement of entrances, and the distance between buildings of different scales often best prescribe how new development will fit into the surrounding context” (p. 51), thereby underscoring “the importance of ensuring redevelopment can integrate well with its surroundings through context-sensitive design and scale” (p. 50). For example, although “missing middle” buildings in fact contain higher density than the surrounding low residential housing, they nevertheless tend to be perceived as lower density than other building types because the units are small and well designed (p. 49).

As already discussed, the City needs “missing middle” housing, especially affordable 3- and 4- bedroom units for families. We would support such a development if it were thoughtfully constructed using context-sensitive design and scale appropriate for our neighborhood. In contrast, the proposal here has generated the kind of conflict and strong

opposition described in the Plan (p. 50) because it does not integrate well within the context of our neighborhood.

The “more intense,” taller, and larger building forms, such as this proposed 3-story, 53-unit building, may be appropriate for medium residential zoning located along “major corridors adjacent to, or running through, low residential areas” (p. 21). An example of such controversial development is Sequoya Commons (p. 50), but that development is located on Midvale Boulevard, a major thoroughfare. In contrast, Hammersley Road is not a major corridor; it is a small, dead-end street. Further, although Hammersley Road is zoned medium-residential, the street is more accurately characterized as low-medium residential, made up of small lot single family homes and small 2-story multi-family buildings.

The neighborhood has already submitted extensive documentation to the Plan Commission about the design, scale, scope, and density of buildings in our neighborhood, but the following is a summary:

- All multi-family buildings are 2-stories high; none are 3-stories high
- Most multi-family buildings are duplexes or 4-plexes, with a few being larger density (but all are still 2-stories high)
- Most multi-family buildings were built in the 1970s
- All of the multi-family buildings on Hammersley have brick exteriors to blend in with the predominantly 1950s ranch-style homes in the neighborhood
- All of the multi-family buildings have large front yard set-backs and are aligned with the adjacent residential set-backs

This evidence demonstrates that this building is far too tall for our neighborhood. Moreover, even though the City has largely abandoned density of development as a determining factor and now favors height maximums (*see* p. 50, Comprehensive Plan), the density of this development is problematic in that our neighborhood is very small, with only around 721 residents. The density of this 53-unit apartment complex, which will house at least 64+ residents, far exceeds every other building in the neighborhood and will unsustainably add too many residents to our neighborhood, adding in one fell swoop:

- Approximately 8% more residents to our 721-person neighborhood
- Approximately 12% more households to our 377-household neighborhood
- Approximately 11% more housing units to our 422-housing-unit neighborhood

In short, the context of our neighborhood is much more compatible with small scale “missing middle” housing. We would support a building form that integrates with its surroundings through design and scale. The kind of development we support is consistent with the kind of development the City wants and needs, as the “missing middle” housing would “balance wishes of neighborhood residents and the needs of the whole community” (p. 50).

Indeed, the corner of Hammersley and Pontiac—the gateway to our neighborhood—would also be a great place for public art (p. 84), green spaces for flooding mitigation (p. 90), or a community gathering space or small community garden (p. 98). Inexplicably, however, the Plan Commission did not approve the kind of development that the neighborhood wants and the City needs, but instead approved the kind of development the developer wanted.

2. The City’s Plan and the zoning code both require context-sensitivity, but this development is not context-sensitive.

Context sensitivity matters, because “building form, not density, should be the primary consideration for determining whether a building fits appropriately within a given neighborhood, district, or corridor” (p.17). Context sensitivity is also very important in transitioning underutilized areas, such as our neighborhood, into “vibrant, mixed-use activity centers” (p. 15).

Context sensitivity, in the form of design aesthetics, is also a *required* standard that *must be met* in order to obtain conditional use approval for a development that is non-conforming under Madison’s zoning code. *See MGO* § 28.183(6)(a) (Standard 9) (the project must create an environment of sustained aesthetic desirability compatible with the existing character of the area and statement of purpose for the zoning district).

Here, however, this development is not at all context-sensitive. It is too tall, too big, and too modern, and too close to the sidewalk. Its small set-backs are comparable to commercial set-backs, taking up 75% of the available parcel, yet all other multi-family buildings on the street align with larger residential set-backs. Its aesthetics look like most other developments being constructed in the city, but it does not integrate with the classic brick exteriors of all the nearby apartments and condominiums.

The Plan is also clear that “special attention must be paid to design within [medium residential] areas where the use adjoins less intense residential development” (p. 21), such as our neighborhood. The Plan and the zoning code also require architectural features and transitional elements, such as step-backs, fencing, and landscaping buffers, to transition [medium residential] development to less intense surrounding development (p. 21, p. 38).

Here, however, the architectural and landscaping elements do not serve to transition the development to the low residential area. Photographs and data that the neighborhood submitted clearly show that the large, tall building form will not mitigate “massing and shadow impacts,” (p. 38); the building will almost entirely block the sunlight from adjacent properties. Nor will the landscaping create sufficient buffer between the properties, particularly in light of how close the property will be to the sidewalk and street. There is very little green space for planting, and as already discussed, the neighborhood has significant concerns that the over-story tree that is currently there will not survive the construction.

In short, this development is not context sensitive, and does not provide an appropriate transition to existing residences. These deficiencies could be mitigated or even eliminated if

the Plan Commission would approve the kind of development that our neighborhood supports and our City needs, but it is not the kind of development they actually approved.

CONCLUSION

We fully support a context-sensitive, mixed-use, responsible development that enhances our neighborhood, and recognize the great need for affordable family housing in our City. Therefore, it is incomprehensible to us that the Plan Commission approved a development that will have detrimental effects on our neighborhood and fails to meet these required standards.

Without standards, there can be no accountability. We urge this Council to hold the Plan Commission accountable to the conditional use standards and explanations that it is duty bound and legally required to uphold.

Accordingly, we ask that this Council reject the application, or in the alternative, modify the Plan Commission's decision to account for our concerns before the development plan is approved.

Respectfully submitted on behalf of the
Summit Woods Neighborhood Association

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