



January 21, 2020

VIA EMAIL

Heather Stouder, AICP
Director, Planning Division
City of Madison Department of Planning &
Community & Economic Development
215 Martin Luther King Jr. Blvd., Ste. 017
Madison, Wisconsin 53703

Re: Division of 3285 Nelson Road, Parcel 0810-244-8670-3 (*Property*)

Dear Ms. Stouder:

Quarles & Brady LLP represents Property owners Peter Sachs and Chelsea Sachs. As we have discussed, the Sachs made application to subdivide their Property and to rezone it to residential zoning (*Sachs Division*). The Property is subject to the applicable terms of the Cooperative Plan dated January 5, 2007 (*Cooperative Plan*) between the Town of Burke and City of Madison, among others, and to City of Madison extraterritorial zoning. As you know, the certified survey map portion of the Sachs Division is “development” under Section 6 of the Cooperative Plan and a land division. However, its proposed rezoning to a residential classification is not “development” under Section 6 of the Cooperative Plan and therefore not subject to City review. As the Sachs move ahead with seeking approvals, they intend that this letter, among other things, evidence City planning staff’s abuse of extraterritorial jurisdiction in a manner that has interfered with the Sachs’ modest 4-lot land division proposal and resulted in considerable delay and expense to the Sachs.

After the Sachs modified their CSM, provided satisfactory expert wetland and drainage analysis, and agreed to execute a development agreement with the Town to improve and extend Sunnyburke Drive, the Town of Burke approved the Sachs Division. The Sachs Division is further subject to Dane County and City of Madison review and approval in accordance with applicable law. In a July 19, 2019 memorandum from Ben Zellers of City planning to Pamela Andros of Dane County Planning and Development (*City Memo*), Mr. Zellers recommended County rejection of the Sachs Division. County planning staff now cite the City Memo as a basis for their opposition to the Sachs Division.

The City Memo recommends that Dane County reject the Sachs Division for four reasons. First, it posits that the Sachs Division is incompatible with adjacent development patterns and does not maintain the general land development pattern of the area. Second, it objects to the creation of flag lots. In a follow up phone conversation with Mr. Zellers, he stated that flag lots, while common in the area surrounding the Property, are not permitted under (inapplicable) City ordinances. Third, the City Memo begins with an acknowledgement that the City has no development plan for the Property, but ends with the speculation that the plan might include a finer gain street network that the Sachs Division would, it imagines, impede. Fourth, the City Memo states that the City supports the completion of Sunnyburke Drive to its southern platted end to provide access to the lots in the Sachs Division.

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Section 236.45(3)(b) of the Wisconsin Statutes limits a municipality's use of its extraterritorial zoning. It prohibits the denial of a certified survey map unless the denial is based on a City plan. As acknowledged by the City Memo, the City has no plan in place affecting the Property. However, this does not prevent the City Memo from engaging in speculation regarding the likely contents of such a plan and using that speculation as the basis for recommending the rejection of the Sachs Division. And yet, because no plan exists, the City Memo is unable to make a single recommendation to the Sachs on how they might reconfigure their proposal to meet with this non-existent plan. The City Memo is not alone. In Mr. Sachs' meetings with you and Mr. Parks, the selfsame speculations regarding the plan were brought forth, leading to the same speculative objections, and then, after Mr. Sachs repeatedly asked for possible recommendations, City planning staff demurred, citing the lack of a plan that might guide their recommendations. The City Memo and these conversations represent precisely the sort of Kafkaesque abuse of extraterritorial powers prohibited by 236.45(3)(b).

Violating 236.45 is bad enough. But the City Memo contains four baseless objections that appear to have been prepared with seeming ignorance of the Property, as if boilerplate. For example, the City Memo asserts that the Sachs Division is contrary to patterns of development and contains disfavored flag lots. This objection is belied by even the most cursory examination of the neighborhood. A home already exists on Sunnyburke Drive on a lot in substantially the same orientation as the lots proposed by the Sachs Division. The Property is immediately adjacent to an existing neighborhood featuring a substantial flag lot and a cul-de-sac. To the west is a property characterized by substantial City-approved flag lots that is bounded on the west by a commercial area that would appear to foreclose westward street penetrations. To the south, there is the medium density Burke Conservancy featuring large lots and curved streets. In short, the surrounding area is precisely compatible with the medium density lots we propose. It bears no resemblance to, and is utterly incompatible with, the neighborhood conjured by the City Memo with its vision of finer-grained street networks and the like. The City Memo's last listed objection regards the City's support for the completion of Sunnyburke Drive. We direct your attention to item 7 of Town of Burke Resolution No. 09182019B, which specifically includes the extension of Sunnyburke Drive. Inexplicably, road completion is listed last in a paragraph detailing City objections.

For the forgoing reasons, we request that you promptly rescind the City Memo and refrain from making any further opposition to the Sachs Division until it comes before the City for approval. If City planning staff has remaining concerns over the Sachs Division at that time, then they will have an opportunity to present views in keeping with 236.45(3)(b). If the City persists in raising unpermitted and irrelevant objections to the Sachs Division, then the Sachs intend to pursue every administrative and legal remedy at their disposal.

Thank you very kindly for your time and attention to this matter. Feel free to contact me with any comments or questions.

Very truly yours,



Brian D. Anderson

CC: Peter Sachs (via Email)
Chelsea Sachs (via Email)
Emily Feinstein, Esq. (via Email)
Brenda Ayers, Town of Burke (via Email)
Roger Lane, Dane County Zoning Administrator (via Email)
Majid Allan, Senior Planner (via Email)
Pam Andros, Senior Planner (via Email)