

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

REV. KAREN HAGEN
2649 N. Hackett Avenue, Unit 3
Milwaukee, WI 53211,

LARRAINE MCNAMARA-MCGRAW
2633 N. Hackett Avenue, Unit F
Milwaukee, WI 53211,

NEIL THOMPSON
2664 N. Hackett Avenue
Milwaukee, WI 53211,

MARK PLOTKIN
2637 N. Summit Avenue
Milwaukee, WI 53211,

and

DEBBIE BYLAN
2633 N. Hackett Avenue, Unit B
Milwaukee, WI 53211,

Plaintiffs,

v.

CITY OF MILWAUKEE
c/o City Clerk
200 E. Wells Street, Room 205
Milwaukee, WI 53202-3567,

and

CITY OF MILWAUKEE CITY PLAN COMMISSION,
809 N. Broadway, 2nd floor
Milwaukee, WI 53202
c/o City Clerk
200 E. Wells Street, Room 205
Milwaukee, WI 53202-3567,

Defendants.

Case No.:

Case Code: 30701

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose physical address is: Clerk of Circuit Court, Milwaukee County Courthouse, Room 104, 901 North 9th Street, Milwaukee, WI 53233, with a copy sent to Mawicke & Goisman, S.C., c/o J. Nels Bjorkquist, whose address is 1509 North Prospect Avenue, Milwaukee, WI 53202.

You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee, Wisconsin, this 18th day of August 2022.

MAWICKE & GOISMAN, S.C.
Attorneys for Plaintiff

Electronically signed by J. Nels Bjorkquist
J. Nels Bjorkquist
State Bar No. 1037896

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COMPLAINT

The plaintiffs, by and through their attorneys, Mawicke & Goisman, s.c., as and for their Complaint against the Defendants, City of Milwaukee and City of Milwaukee City Plan Commission, allege and show to the Court as follows:

I. PARTIES

1. Plaintiff Rev. Karen Hagen is an individual natural person who resides within Milwaukee County and the City of Milwaukee at 2649 N. Hackett Avenue, Unit 3, Milwaukee, WI 53211.

2. Plaintiff Lorraine McNamara-McGraw is an individual natural person who resides within Milwaukee County and the City of Milwaukee at 2633 N. Hackett Avenue, Unit F, Milwaukee, WI 53211.

3. Plaintiff Neil Thompson is an individual natural person who resides within Milwaukee County and the City of Milwaukee at 2664 N. Hackett Avenue, Milwaukee, WI 53211.

4. Plaintiff Mark Plotkin is an individual natural person who resides within Milwaukee County and the City of Milwaukee at 2637 N. Summit Avenue, Milwaukee, WI 53211.

5. Plaintiff Debbie Bylan is an individual natural person who resides within Milwaukee County and the City of Milwaukee at 2633 N. Hackett Avenue, Unit B, Milwaukee, WI 53211.

6. Defendant City of Milwaukee is a political corporation or governmental subdivision that is domiciled within Milwaukee County and conducts business through,

inter alia, its City Clerk's office at 200 E. Wells Street, Room 205, Milwaukee, WI 53202-3567.

7. Defendant City of Milwaukee City Plan Commission is a governmental subdivision of the City of Milwaukee Department of City Development, is domiciled within Milwaukee County, and conducts business through its office at 809 N. Broadway, 2nd floor, Milwaukee, WI 53202.

II. JURISDICTION AND VENUE

8. Jurisdiction in this Court is proper because:

- The Defendants are each a person within the meaning of Wis. Stat. § 801.03(2);
- This action involves defendants who were each present within the State and engaged in substantial and not isolated activities within the State of Wisconsin;
- This action arises out of an act or omission within this state causing injury to person or property.

Wis. Stat. §§ 801.05.

9. Venue in Milwaukee County is proper pursuant to Wis. Stat. §§ 801.50(2)(a), (b), (c), and (d) as the county where the claim arose; where the real property affected and at issue is situated; where the defendants reside; where the defendants do substantial business; and designated by the plaintiffs.

GENERAL ALLEGATIONS

10. This action arises out of the proposed erection of a large high-density rental apartment complex on the 2600 block of N. Hackett Avenue on Milwaukee's East Side ("Proposed Complex").

11. The size and scope of the apartment complex as proposed exceeds the existing limitations under the current zoning.

12. The proposed site for the Proposed Complex is Lots 24, 25, 26, and most of Lot 27 in Gilman's Subdivision at approximately 2620-2640 N. Hackett Avenue, Milwaukee, WI 53211 ("Site").

13. The Site is currently zoned RM3, which allows a maximum of 12.5 residential units on the site given its size of approximately 30,000 square feet and RM3 zoning's requirement of 2,400 square feet of lot area per residential units: $30,000 \text{ square feet} / 2,400 \text{ square feet per unit} = 12.5 \text{ units}$.

14. The Proposed Complex, however, would include 55 residential units: 8 studios, 17 one-bedroom apartments, and 30 two-bedroom apartments.

15. The Proposed Complex, therefore, would include at least 42.5 more residential units than is allowed by Milwaukee's zoning code: $55 - 12.5 = 42.5$.

16. The Proposed Complex would include over 4 times as many units as are allowed by the Site's zoning: $55 / 12.5 = 4.4x$.

17. The 2600 block of N. Hackett is a quiet, one-way, residential block dominated by owner-occupied condominiums in 100+-years-old buildings, two churches, and a neighborhood restaurant.

18. The Site is mid-block and has for 100 years or more been vacant lawn except for a small parking lot and a portion of a church building erected in 1948.

19. The Site's block and neighborhood cannot absorb the population increase, population density, increased traffic, increased parking load, or increased safety risks posed by the non-conforming character and scope of the Proposed Complex.

20. As shown in a preliminary analysis attached as **Exhibit A**, the Proposed Complex would nearly triple the number of residential units on the Site's block.

21. Currently, 29 residential units exist on the Site's block. The addition of 55 new residential units would nearly triple that number to 84:

84 proposed total units / 29 current units = 2.9x.

22. As shown in a preliminary analysis attached as **Exhibit A**, the Proposed Complex would triple, quadruple, or more than quintuple the population of the 2600 block of N. Hackett Avenue, pushing it from 38 current residents to between 123 and 208 (an increase of 85-170 renters to a street currently housing no renters and only 38 owners):

- Low estimate: 123 total proposed residents / 38 current residents = 3.2x
- Higher estimate: 208 total proposed residents / 38 current residents = 5.5x

23. As shown in a preliminary analysis attached as **Exhibit A**, the new occupants of Proposed Complex would add, as a mid-level estimate, 91 more cars on the

2600 block of N. Hackett Avenue, but the Proposed Complex includes only 69 parking spots. This would leave an additional 22 cars to vie for street parking spots that are already preciously scarce given the Site's proximity to the parking-starved Downer Avenue business district: $91 \text{ new cars} - 69 \text{ new parking spots} = 22 \text{ new cars without new parking spots}$.

24. The Proposed Complex is out of scale and incompatible with the Site, the 2600 block of N. Hackett Avenue, and the surrounding neighborhood.

25. Because the Proposed Complex contains 440% ($55 / 12.5 = 4.4$) of the residential units that are allowed on the Site by the zoning code, the defendants have been presented with a request to change the Site's zoning from RM3 to RM6, to which request the defendants have assigned file number 220401.

26. Jumping from RM3 zoning all the way up to high-density RM6 zoning for the Site would impose extreme and radical change and hardship on a quiet, one-way street that is exclusively owner-occupied and has been a stable neighborhood for over 100 years.

27. Cranking up the Site's zoning from RM3 all the way to RM6 is overreach and is unnecessary to achieve the City of Milwaukee's development and planning goals.

28. For instance, as a reasonable alternative, changing the Site's zoning from RM3 to RM4 would allow a doubling of the permissible residential units from the currently permissible 12.5 units to 25 residential units at 1,200 square feet lot area per unit for the 30,000 square foot site: $30,000 \text{ square feet} / 1,200 \text{ square feet per unit} = 25 \text{ units}$.

29. The defendants have not made public the request for the zoning change.

30. The request for the zoning change is supported by a bare-bones form purporting to be an affidavit that contains no explanation, justification, or reasons supporting the zoning change. A true and accurate copy of the form/affidavit is attached hereto as **Exhibit B**.

31. The zoning change check-a-box affidavit form (**Exhibit B**) is the only publicly available document supporting the requested zoning change.

32. The zoning change check-a-box affidavit form (**Exhibit B**) consists of five checked boxes and a signature.

33. The zoning change check-a-box affidavit form (**Exhibit B**) is devoid of any substantive description of the requested zoning change does not explain why doubling the permissible residential density of the Site by changing the zoning to RM4 would not satisfy the needs of the neighborhood, the community, and all interested and impacted parties or why sextupling the permissible density by jumping all the way to RM6 is necessary or in any way compatible with the medium-density neighborhood to which the Site has belonged for 100+ years.

34. The defendants have drafted a substitute ordinance to amend the city's zoning map to effect the requested zoning change for the Site, the remainder of Lot 27, and all of Lots 28 and 29 of Gilman's Subdivision at 2604 N. Hackett Avenue, Milwaukee, WI 53211.

35. The Site is located in the city's third aldermanic district, as are the homes of the plaintiffs and the residents of the properties affected by the requested zoning change and the Proposed Complex.

36. The third aldermanic district currently lacks any local elected representation with city government, as there is no seated alderman for the third aldermanic district.

37. The plaintiffs previously requested that the mayor's office intervene on their behalf so that the interests of the third aldermanic district and its residents could be properly evaluated and considered before determination of the requested zoning change.

38. The mayor and/or his representatives told the plaintiffs that "the business of the city must continue" even if the residents of the 2600 block of N. Hackett Avenue and the third aldermanic district are without elected representation on the Common Council and the city's various committees and commissions.

39. The plaintiffs previously gave notice of their objections and claims regarding and in opposition to the Proposed Complex and the requested zoning change it would require.

40. The defendants have had actual notice of the Plaintiffs' objections and claims regarding the Proposed Complex and the requested zoning change it would require.

41. The defendants have not suffered any prejudice for want of further notice regarding the plaintiffs' objections and claims regarding and in opposition to the Proposed Complex and the requested zoning change.

42. The defendants' confessed intention to consider the requested zoning change without commissioning or conducting traffic, safety, and parking studies while the affected neighborhood is unrepresented by any sitting alderperson obviates any additional notice to the defendants because of the exigent circumstances and the prospect of irreparable harm in violation of due process and equal protection.

43. The defendants are slated to consider the request to change the zoning map to multiply by 6 the permissible residential density on the Site at a hearing of the City Plan Commission on August 22, 2022.

44. The defendants' representative(s) have indicated that they have not and will not conduct any traffic studies for this proposed zoning change and Proposed Complex despite the fact that the Proposed Complex will triple, quadruple, or quintuple the block's population, which will induce increased traffic for resident ingress and egress, food and package delivery, contractors and service calls, garbage and recycling collection, guests, and non-residents seeking more scarce parking.

45. The defendants' representative(s) have indicated that they have not and will not conduct any parking studies for this proposed zoning change and Proposed Complex despite the fact that the Proposed Complex will bring 91 or more extra resident

cars but only 69 more parking spots (a deficit of 22 parking spots) to a block already starved for street parking and that currently houses only 38 residents.

46. The Proposed Complex's 22-parking-spot deficit is substantial hardship for a block with only 38 residents in a neighborhood already extremely short on parking spots.

47. The defendants' representatives have indicated that they have not and will not conduct any safety studies for this proposed zoning change and Proposed Complex despite the fact that the Proposed Complex will inject into the 2600 block of E. Hackett Avenue between 85 and 170 renting residents, 91 additional cars, and additional guest and invitee visitors when there are currently only 38 home-owning residents on the block.

48. The plaintiffs' interests in their property, their block, their neighborhood, their aldermanic district, and their city in terms of traffic, safety, and parking are unrepresented in the city, on the City Plan Commission, and on the Common Council in the current absence of an alderman and any city-commissioned or city-conducted studies of traffic, safety, and parking,

49. The requester of the zoning change has not presented, and upon information and belief has not commissioned or conducted, any traffic, safety, or parking studies of the impact of the requested jump all the way to RM6 zoning for the site and the Proposed Complex.

50. The requested zoning change and the Proposed Complex would cause the plaintiffs substantial and irreparable harm.

51. The substantial and irreparable harm the requested zoning change and the Proposed Complex would cause the plaintiffs and their neighborhood warrants objective examination and study before any action is taken on the proposed zoning change or Proposed Complex.

52. A zoning change to facilitate the erection of the Proposed Complex, which is so significantly out of compliance with the neighborhood's longstanding zoning and which is so significantly out of proportion to and out of character with the neighboring properties, would be arbitrary, capricious, a violation of due process, a deprivation of equal protection, and contrary to the city's expressed criteria of the zoning code when the impacted property owners are unrepresented by any sitting alderperson and the city has not conducted any traffic, safety, or parking studies regarding the adverse impacts of tripling, quadrupling, or quintupling the block's population and density.

53. The City of Milwaukee's zoning code provides that the purpose of the Site's RM3 zoning "is to promote, preserve, and protect neighborhoods intended primarily for medium-density residential uses with an urban character. ... [T]he neighborhoods [zoned RM3] were platted and developed, in large part, in the early 1900s and tend to be more uniform and of a lower density than those of the RM4-RM7 districts." Milwaukee Code of Ordinances § 295-501-3.b.

54. By contrast, high-density multi-family residential districts are zoned RM4, RM5, RM6, or RM7, with each step up authorizing higher density.

55. The Proposed Complex would require the city's second-highest density zoning for multi-family residences, RM6.

56. RM6 zoning is "intended primarily for high-density multi-family uses." Milwaukee Code of Ordinances § 295-501-3.c.

57. The Site's block, however, is not high-density, has been the site of medium-density residential units for over 100 years, and every single residential unit on the block is owner-occupied with no rentals on the block.

58. The other residential units surrounding the Site's block - including the homes on Summit Avenue that share a rear lot line with the Site and would be overshadowed by the outsized Proposed Complex - are single-family homes zoned for single families and occupied by their owners, so the Site's extended neighborhood is low density and has been so for 100+ years.

59. Milwaukee's zoning code residential provisions are "intended to promote, preserve, and protect neighborhood residential neighborhoods." Milwaukee Code of Ordinances § 295-501.

60. The zoning code's residential provisions are intended to ensure future development does not "detract from the overall image and character of the residential neighborhood." Milwaukee Code of Ordinances § 295-501.

61. The zoning code's residential provisions "promote desirable residential areas" such as the Site's block "by addressing aesthetically pleasing environments, safety, privacy and recreational opportunities." Milwaukee Code of Ordinances § 295-501.

62. The zoning code's residential provisions are intended to "preserve the character of neighborhoods" by providing 6 different zones with different densities and development standards. Milwaukee Code of Ordinances § 295-501.

63. To "preserve the character of neighborhoods," proposed developments of high density must be sited in neighborhoods already zoned for high-density development and which already include existing high-density residences.

64. Jumping from RM3 zoning that allows 12.5 units all the way up to high-density RM6 zoning that allows 55 or more units on a block that for over 100 years has been medium-density would contradict the zoning code's mandate to "promote, preserve, and protect" the neighborhood and to "preserve the character of [the] neighborhood[]."

65. Injecting high-density RM6 zoning into a stable, 100+-years-old neighborhood consisting of single family homes and medium density owner-occupied condominiums would be violative of the zoning code's mandate to "promote, preserve, and protect" the neighborhood and its character, nature, and scale. Milwaukee Code of Ordinances § 295-501.

66. The zoning code's residential provisions articulate the city's explicit interest in and public policy of any proposed development "maintaining compatibility with the city's various neighborhoods." Milwaukee Code of Ordinances § 295-501.

67. Dropping into the Site's block the high-density Proposed Complex when it is out of scale, out of proportion, and out of character for the neighborhood and the long-

existing and zoning-code-compliant medium-density owner-occupied building would contradict the zoning code's mandate of new projects "maintaining compatibility" with the existing neighborhood.

68. The zoning code's residential provisions are explicitly intended to "provide certainty to property owners" as to the types and intensity of uses they can expect properties on their block and in their neighborhood to be put. Milwaukee Code of Ordinances § 295-501.

69. Here, on a block of 38 residents in medium-density owner-occupied buildings surrounded by a neighborhood of low-density single family homes also occupied by their owners, it would be directly contrary to the zoning code's mandate of providing certainty to property owners regarding the nature and character of the neighborhood they chose to make their home were the defendants to jump from medium-density RM3 zoning all the way up to RM6 high-density zoning to facilitate the Proposed Complex that will dwarf all nearby building, possibly quintuple the block's population, introduce a significant increase in traffic, reduce the safety of the neighborhood, and exacerbate the neighborhood's scarcity of parking.

70. The requested zoning change would overturn the apple cart as to the neighborhood's character and its residents' certainty and reasonable expectations instead of the providing the residents' the certainty that the RM3 zoning and the city's zoning code and zoning map was intended to provide them.

71. The defendants have indicated an intention to consider the requested zoning change without first conducting a reasonable investigation as to the extent and nature of the traffic, safety, and parking impacts of the requested zoning change.

72. The defendants have also indicated an intention to consider the requested zoning change without first providing the public with any information from the requester regarding the purported basis or justification for the requested zoning change.

73. The defendants have also indicated an intention to consider the requested zoning change without first providing the public with any information from the requester regarding any purported reasons why the requester may believe that other zoning designations that would preserve and be compatible with the longstanding and stable nature and character of the neighborhood (*e.g.*, RM4 or RM4) are not sufficient to meet the city's needs, the mandates and purposes of the city's zoning code, and strong explicit public policies favoring protection and preservation of the nature, character, and scale of the city's neighborhoods.

74. The defendants have failed to consider, evaluate, or examine the alternatives to the requested zoning change:

- a. Keeping the neighborhood's RM3 zoning would allow the Site's owner to sell the Site to a developer, would give the owner money to use to raze its current annex and to build a new annex, would restore the Site to the City's tax rolls, would provide 12 new housing units for area residents and workers, and would increase foot traffic to local

businesses. All of the defendants' and owner's stated goals can be achieved with the current zoning.

- b. Doubling the density by ratcheting up the zoning by one increment to RM4 zoning would also allow the Site's owner to sell the Site to a developer, would give the owner the ability to build a new church building, would restore the Site to the tax rolls, would provide 25 (twice as many) residential units, and would increase the traffic to local businesses. All of the defendants' and owner's goals can be achieved with a reasonable, incremental step toward increased density in a neighborhood-compatible manner by a zoning change to RM4.
- c. Tripling the density by ratcheting up the zoning by *two* increments to RM5 zoning would also get the owners paid, yield tax revenue for the City, generate 37 new residential units (3x the current zoning), and increase foot traffic to local businesses. All the defendants' and owner's goals would be satisfied with RM5 zoning, though it would be incompatible with the character, nature, scale, aesthetics, and image of the neighborhood.
- d. Sextupling the density by ratcheting up the zoning by *three* increments all the way to RM6 zoning, however, is the only option the defendants have considered or evaluated.

- e. By failing to evaluate the intervening zoning of RM4 and RM5, the defendants have fallen into the requester's false choice between achieving their goals through RM6 or not achieving their goals at all.
- f. Alternatives to RM6 zoning exist that would achieve the defendants' and requester's goals in a manner compliant with the explicit purposes of the zoning code, but the defendants have failed to analyze, evaluate, or even consider them.
- g. The zoning code presents a spectrum of permissible densities, and the defendants are allowing themselves to be led to an artificial choice between RM3 and RM6 zoning. In reality, are multiple options for the defendants to choose from:
 - (1) stick with RM3 and still achieve everyone's goals;
 - (2) double density by moving up one zoning level to RM4 and still achieve everyone's goals while preserving the neighborhood and honoring the policies of the zoning code;
 - (3) triple density by jumping up *two* zoning levels to RM5, achieving the requester's goals while putting undue pressure and running counter to the stated policies of the zoning code;or, as proposed

- iv. sextupling maximum density in a medium-density neighborhood by leapfrogging RM4 and RM5 zoning to impose RM6 zoning in a neighborhood that cannot bear it.

75. The defendants are not evaluating the alternatives, and the defendants staff have not conducted or provided to the defendants any analysis of the alternatives that could still achieve all of the stated goals of the city and the requesters: RM3, RM4 or RM5 zoning.

76. In the absence of any objective evaluation of the successful alternatives, the defendants are acting in violation of their obligations and duties.

FIRST CAUSE OF ACTION:
DECLARATORY JUDGMENT

77. The plaintiffs repeat, reallege and incorporate herein by reference the allegations of all preceding paragraphs of this Complaint as though more fully set forth herein.

78. Pursuant to Wis. Stat. § 806.04, the plaintiffs are entitled to a judicial declaration of their rights relative to the defendants in connection with, *inter alia*:

- a. the defendants' consideration of the requested zoning change for the Proposed Complex when the plaintiffs and all the neighborhood's residents are unrepresented in city government because no alderperson is currently seated for the city's third aldermanic district;
- b. the defendants' consideration of the requested zoning change for the Proposed Complex when neither the requester nor the defendants have

- commissioned, conducted, or presented any studies of the deleterious traffic, safety, and parking effects of the request zoning change;
- c. the requester's failure to present any justification for the requested jumped from RM3 all the way to RM6 zoning despite the plaintiffs' presentation of myriad ways in which the requested zoning change is incompatible with the neighborhood and in violation of the city's zoning code's residential provisions and express public policies;
 - d. the serious traffic, safety, and parking risks posed by the requested zoning change, which the requester has not addressed and which the defendants have stated they do not intend to investigate;
 - e. the prospect that any decision by the defendants in relation to the requested zoning change and the Proposed Complex without the city's independent study of the deleterious traffic, safety, and parking impacts thereof would represent their will rather than their reasoned judgment and therefore would be invalid and unlawful as arbitrary and capricious; and
 - f. the defendants' consideration of other zoning changes and proposed developments in other neighborhoods that are represented on the Common Council and relevant committees and commissions by virtue of having a seated alderperson while the plaintiffs and their neighbors

in the third aldermanic district are left unrepresented in violation of their guarantees of both due process and equal protection under the law.

79. The plaintiffs pray for a judicial declaration stating, *inter alia*:
- a. that the plaintiffs are entitled to due process throughout the consideration of the requested zoning change and the Proposed Complex;
 - b. that the plaintiffs are entitled to equal protection under the law, relative to all other residents of the city, throughout the consideration of the requested zoning change and the Proposed Complex;
 - c. that, in observation and defense of the plaintiffs' guarantees of due process and equal protection and the zoning code's mandate to preserve and protect the safety, nature, and character of the Site's neighborhood, the defendants may not consider the requested zoning change unless and until:
 - i. the plaintiffs and the other residents of the third aldermanic district are represented in city government on the Common Council and relevant committees and commissions by a seated alderperson;
 - ii. the city either commissions or conducts, and then considers, a study of the deleterious traffic impacts of a zoning change and the Proposed Complex that would bring 91 additional

resident cars and innumerable guest, delivery, service, and emergency vehicles to a quiet but already desperately crowded one-way street;

- iii. the city either commissions or conducts, and then considers, a study of the deleterious safety impacts of a zoning change and the Proposed Complex that would triple, quadruple, or quintuple the population of a quiet, owner-occupied block and result in a significant increase in traffic, pedestrians, loitering, and blockages for emergency vehicle ingress and egress;
- iv. the city either commissions or conducts, and then considers, a study of the deleterious parking impacts of a zoning change and the Proposed Complex that will add 91 resident vehicles to the block but add only 69 parking spaces, leaving a parking deficit of 22 additional resident vehicles to compete with the existing 38 residents for already preciously scarce street parking (the new residents essentially taking the existing residents' scarce parking at a 1:1 ratio; 22 new vehicles taking away 22 existing spots from the existing 38 residents) and placing untenable pressure on

the limited parking in the surrounding area, including the Downer Avenue commercial corridor;

- v. the defendants make publicly available the request for the zoning change;
- vi. the defendants make publicly available at least 10 days prior to any meeting or public hearing any and all materials to be used by the requester of the zoning change to support or justify the zoning change; and
- vii. the defendants confirm and acknowledge that the requester of the zoning change bears the burden of production and persuasion in relation to the requested jump from RM3 zoning all the way up to RM6 high-density zoning.

80. In addition to a judicial declaration of the parties' rights regarding the aforementioned issues and other related details as they may arise and present in this proceeding, the plaintiffs are entitled to an order enjoining the defendants from considering or taking any action on the requested zoning change or the Proposed Complex until further order of this Court because:

- a. the plaintiffs are likely to suffer irreparable harm if the injunction is not issued;
- b. the plaintiffs have no other adequate remedy at law;
- c. an injunction is necessary to preserve the status quo; and

d. the plaintiffs have a reasonable probability of success on the merits given the circumstances.

SECOND CAUSE OF ACTION:
WRIT OF PROHIBITION

81. The plaintiffs repeat, reallege and incorporate herein by reference the allegations of all preceding paragraphs of this Complaint as though more fully set forth herein.

82. The defendants would exceed their jurisdiction and authority were they to persist in considering and/or acting upon the requested zoning change and the Proposed Complex before the affected neighborhood is represented by an alderperson; before the city considers the traffic, safety, and parking impacts of the requested zoning change and the Proposed Complex; and before the plaintiffs are afforded due process and equal protection under the law.

83. A writ of prohibition can be employed by a circuit court to restrain an inferior tribunal from exceeding its jurisdiction and authority, such as by arbitrarily and capriciously imposing its will rather than its reasoned judgment before investigating the material facts and affording the affected property owners due process and equal protection under the law.

84. The plaintiffs and those similarly situated would suffer great hardship were the defendants to persist in considering and/or acting upon the requested zoning change or Proposed Complex before the affected neighborhood is represented by an alderperson; before the city considers the traffic, safety, and parking impacts of the requested zoning

change and the Proposed Complex; and before the plaintiffs are afforded due process and equal protection under the law.

85. The plaintiffs pray for a writ of prohibition directing the defendants to:
 - a. desist and refrain from any further proceedings on the requested zoning change or the Proposed Complex until a day to be fixed by this Court and the further order of this Court; and
 - b. show cause why they should not be absolutely restrained from any further proceedings on the requested zoning change or the Proposed Complex.

86. The plaintiffs further pray for a writ of prohibition directing the defendants to desist and refrain from any further proceedings on the requested zoning change or the Proposed Complex until, *inter alia*:
 - a. the plaintiffs are afforded due process throughout the consideration of the requested zoning change and the Proposed Complex;
 - b. the plaintiffs are afforded equal protection under the law, relative to all other residents of the city, throughout the consideration of the requested zoning change and the Proposed Complex;
 - c. in observation and defense of the plaintiffs' guarantees of due process and equal protection and the zoning code's mandate to preserve and protect the safety, nature, and character of the Site's neighborhood:

- i. the plaintiffs and the other residents of the third aldermanic district are represented in city government on the Common Council and relevant committees and commissions by a seated alderperson;
- ii. the city either commissions or conducts, and then considers, a study of the deleterious traffic impacts of a zoning change and the Proposed Complex that would bring 91 additional resident cars and innumerable guest, delivery, service, and emergency vehicles to a quiet but already desperately crowded one-way street;
- iii. the city either commissions or conducts, and then considers, a study of the deleterious safety impacts of a zoning change and the Proposed Complex that would triple, quadruple, or quintuple the population of a quiet, owner-occupied block and result in a significant increase in traffic, pedestrians, loitering, and blockages for emergency vehicle ingress and egress;
- iv. the city either commissions or conducts, and then considers, a study of the deleterious parking impacts of a zoning change and the Proposed Complex that will add 91 resident vehicles to the block but add only 69 parking spaces, leaving

a parking deficit of 22 additional resident vehicles to compete with the existing 38 residents for already preciously scarce street parking (the new residents essentially taking the existing residents' scarce parking at a 1:1 ratio; 22 new vehicles taking away 22 existing spots from the existing 38 residents) and placing untenable pressure on the limited parking in the surrounding area, including the Downer Avenue commercial corridor;

- v. the defendants make publicly available the request for the zoning change;
- vi. the defendants make publicly available at least 10 days prior to any meeting or public hearing any and all materials to be used by the requester of the zoning change to support or justify the zoning change; and
- vii. the defendants confirm and acknowledge that the requester of the zoning change bears the burden of production and persuasion in relation to the requested jump from RM3 zoning all the way up to RM6 zoning.

WHEREFORE, the plaintiffs demand judgment as follows:

- A. On the first cause of action, a declaratory judgment and injunctive relief as specified above;

- B. On the second cause of action, a writ of prohibition as specified above;
and
- C. All such other relief as the Court deems proper, appropriate, and
equitable.

Dated at Milwaukee, Wisconsin, this 18th day of August 2022.

MAWICKE & GOISMAN, S.C.
Attorneys for the Plaintiffs

By: Electronically signed by J. Nels Bjorkquist

J. Nels Bjorkquist
State Bar No. 1037896

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Milwaukee, Wisconsin 53202
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TO: City Plan Commission: Stephanie Bloomingdale, Allyson Nemec, Brianna Sas-Perez, Catrina Crane, Ranell Washington, Tarik Moody, Willie Smith

cc: Sam Leichtling, Jonathan Brostoff, Mayor

RE: Proposed 55-Unit Apartment on 2600 Block of Hackett, File 220401

FROM: Neighbors on 2600 block of Hackett and 2600 block of Summit (see list below)

As condominium owners and homeowners on the 2600 blocks of Hackett Ave and Summit Ave, we are writing to express vehement opposition to St Mark's proposed 55-unit apartment building on Hackett. We have many concerns, but the issues of size, density and appearance are of utmost importance to us. The proposed brick—with a highly-saturated deep red color, smooth texture, atypically narrow, and an entirely modern-look—has, regrettably, been accepted without question by the HPC, but issues of size and density remain. We intend to persuade you that these issues warrant the City Plan Commission's rejection of the proposed zoning change.

Frankly, we were shocked to learn that this zoning change doesn't require justification by the requesting party; in other words, they don't have to explain WHY the zoning should be changed. We have taken initiative to provide sound data that clearly quantifies the degree to which the zoning change would alter population density on the 2600 block of Hackett. Following the data, we have identified many reasons why the zoning change should not be granted. Other objections may arise as individuals think more about the analysis.

We respectfully ask that you read this document in its entirety before you decide the outcome of the zoning request.

Please see the follow page for the beginning of our "report."

Written by: Kay Wosewick, 2633 N Hackett Ave, Unit E (see last page for my credentials)

Endorsed by:

Deb Bylan, 2633 N Hackett Ave

Barbara Finch, 2633 N Hackett Ave

Lorraine McNamara McGraw, 2633 N Hackett Ave

Phil Blenski 2633 N Hackett

Barbara Finch, 2633 N Hackett

Jane Strykowski, 2633 N Hackett

Joan Strykowski, 2633 N Hackett Ave

Ken Barbeau, 2633 N Hackett

Kathy Papineau, 2633 N Hackett Ave

Kelly Knoke, 2666 N Hackett

John Neil Thompson, 2664 N Hackett

Neil Thompson, 2664 N Hackett

Janet Thompson 2664 N. Hackett Ave

Rev Karen Hagen, Georgetown

Endorsers from Summit Ave:

Mark Plotkin

Shirley Bankier
Grace Sorbjan
Sam and Jean White
Ellen Blank
Brian Hanson
Melissa Johnson
Jeff and Linda May

Endorsers from Immediate Neighborhood :

Hannah Becker
Esther Shin
James Verbsky
Rob McCoy
Ben Baumes
Maria and Cole Bultman
Krista Dunn
Corey Espinoza
Nader Pakroo
Amanda Reavey
Lucas Kmezich
Christina Todorovski
Jim Bruso
Martha Beckman
Harold Johnson
Maria Becker

Population Density On the 2600 Block of Hackett

LOCATION	UNITS	RESIDENTS	POP DENSITY
EXISTING CONDOMINIUMS			
St Regis	7	9	1.3
Georgetown	14	16	1.1
Stonehenge	8	13	1.6
EXISTING TOTAL	29	38	1.3
PROPOSED APARTMENTS			
		low-mid-high est*	low-mid-high est*
Studio	8	8-12-16	1.0-1.5
1-bedroom	17	17-25-34	1.0-1.5
2-bedroom	30	60-90-120	2.0-4.0
PROPOSED TOTAL	55	85-127-170	1.5-2.3-3.1
EXISTING+PROPOSED TOTALS			
	84	123-165-208	1.5-2.0-2.5
% INCREASE			
	+190%	223%-334%-447%	15%-55%-92%
Ratios			
		L: >3x more M: >4x more H: >5x more	

*Estimates were arrived at as follows:

Studio apartments: 1st estimate = 1 resident per unit; 2nd estimate assumes ½ of units have 2 residents; 3rd estimate assumes 2 residents per unit

1-bedroom apartments: 1st estimate assumes 1 resident per unit; 2nd assumes just under ½ of units have 2 residents; 3rd estimate assumes 2 residents per unit

2-bedroom apartments: 1st estimate assumes 2 residents per unit; 2nd estimate assumes 3 residents per unit; 3rd estimate assumes 4 residents per unit

THREE DENSITY SCENARIOS

Conservative Estimate

The most conservative estimate of the effect of the proposed apartment on population density of the 2600 block of Hackett is astonishing:

- The number of residential units will increase from 29 to 84 units. **This is just under a 200% increase in residential units on a single block.**
- Currently, 38 people reside in owner-occupied condominiums on the 2600 block of Hackett. At minimum, the new apartment will add 85 new residents to this block, bringing the total to 123 individuals. Thus, **there will be more than 2 new residents for every current resident** on this small block. This is the absolute minimum when every unit is rented.

Realistic Estimate

A 'more likely' scenario leads to genuinely depressing changes on the 2600 block of Hackett. This scenario assumes that a married couple or partners will rent $\frac{1}{2}$ of the studios; a married couple or partners will rent just under $\frac{1}{2}$ of the 1-bedroom units; and a married couple or partners plus one other individual will rent $\frac{1}{2}$ of the 2-bedroom units.

- This scenario adds 127 new residents, bringing the total number of residents on this block to 165. **This single, small block of Hackett will likely see a 334% increase in residents virtually overnight.** Put another way, **new residents will outnumber existing residents by a ratio of 3.3 to 1.**

High Estimate

A high-estimate scenario is also supplied. Given shaky economic trends, millennials and upcoming Gen Zs may encounter serious financial binds and be pressed to extreme living conditions. We can only hope this will not happen.

- **Should the worst happen, there could be 4½ times more renters than owners on the 2600 block of Hackett** (170 renters to 38 owners). The street would be unrecognizable.

INTERPRETATION OF THE DATA

The massive population increases will have a broad range of negative effects on the neighborhood. Unless otherwise noted, the implications are based on the conservative estimate of density.

- **Current owner-occupied residents will lose ALL sense of living in a small, lovely, friendly, reasonably quiet neighborhood. This is a genuine neighborhood where people know each other, care about each**

other, and have spontaneous conversations of the street. We often know when someone is moving out so we can say farewell. We welcome new residents personally and talk about what a unique, wonderful neighborhood they have moved to. This applies to both Hackett residents and effected Summit Ave residents.

- Almost all of us treasure Café Hollander's occasional noisy, themed parties, and the way the neighborhood comes alive during the annual bike race. But these events are limited, by choice of the entire Downer neighborhood. We can all say goodbye to guaranteed good seats for these events if the apartment is built.
- However, with far more cars coming and going from the apartment, we can't be certain the neighborhood will be still eligible to host the Downer Neighborhood Classic. Furthermore, Café Hollander gets written approval from neighbors to have their special events. It is difficult to imagine how they will they get written approval from 55 additional residential units.
- The disappearance of these events would be a great loss for the neighborhood, from both cultural/festive and financial points-of-view.

▪ **Residential traffic will at least triple under the realistic density estimate. But total traffic will probably be much worse.**

- An estimated 90 more residential cars will come and go daily on Hackett.** This is three to five times higher than current residential traffic on this block. What kind of safety issues might this pose? How might it affect the Downer/Belleview/Hackett intersection and timing of lights? Will the Park/Hackett intersection need a 4-way stop sign? How will this affect the "life" of the street itself? Why haven't city traffic experts been consulted for a change of this magnitude?
** Assuming the "realistic estimate" of 127 new residents, and assuming second car ownership of 50%. 127 residents minus 55 car owners leaves 72 more possible car owners. At 50% car ownership, that adds that adds 36 more cars, for a total of 91 more residential cars.
- Several different trash, recycling, and compost trucks service this block, and their large size usually makes them unpassable. The apartment building could add to that traffic with different trash and recycling services. Café Hollander delivery trucks are haphazardly parked here frequently, and often can't be passed. These vehicles cause occasional pockets of stopped traffic. Neighborhood drivers are patient when this happens; it's a little idiosyncrasy we tolerate because we love our neighborhood. These stops will occur far more often as apartment traffic increases. Will renters, who may not be used to this kind of neighborhood traffic, be patient when this happens, or will they honk horns and/or yell, adding a level of noise we gratefully almost never hear today? Recent scientific research reveals that noise lowers quality of life and is a stressful irritant for humans and animals, both wild and domestic.
- St Mark's apartment dwellers will be significantly younger than current residents. Younger generations are heavier users of fast-delivery services such as DoorDash and Amazon, services not often seen on this street. How will renters react when forced to wait for delivery trucks blocking their way? With honking and yelling? With no parking available, will delivery drivers simply leave their vehicles running in the street while they dash to the main apartment entrance? And by the way, deliveries will take longer than most because the main entrance is set unusually far from street.
- More cars will be circling blocks, searching for parking spots that were once more readily available. This will get worse as renter street parking inevitably rises.
- Will snowplows be able to easily access this block when traffic triples or quintuples? Where will snow plowed from the apartment's 25' wide driveway be put? Will apartment plows create new problems we can't yet imagine?

- The conditions mentioned above can make drivers inattentive. The massive increase in new traffic in this heavily walked neighborhood could lead to more pedestrian/car as well as car/car accidents. There are also many dog walkers on this block, and additional traffic may make them susceptible to accidents too.
 - All this on a narrow street with two odd corners (one 5-way, the other with a sharp turn, and limited visibility for those who drive small cars. Traffic. Will. Be. A. Serious. Problem. It will certainly reduce any sense of neighborhood we might have had left.
 - (While this is a side issue today, Hackett will likely suffer significant damage from large, heavy trucks that will be coming and going during demolition of St Mark's current addition, construction of St Mark's new addition, deep digging for an underground parking structure, prep and construction a 25' wide driveway, and finally construction of the 55-unit apartment. Is the city going to budget for repairs of the street?)
- **The 2600 block of Hackett as well as neighboring streets are already parking-stressed. Neither the city nor any proponents of the proposals have addressed how these projects will affect parking. Why hasn't a parking study been conducted by the city, especially since St Mark's is eliminating their own parking lot?**
- Many of the apartments will have more than two cars, as discussed above. Using the same assumptions as before,** 22 more vehicles will need to park on the street. This assumes all 14 addition parking spots in the apartment are for renters only, and not for others such as St Mark's employees. With two to three parking spots lost to St Mark's loading/unloading zone and four spots metered, some current parkers will be pushed to other streets. With 22 more cars needing parking on a daily/nightly basis, residents on other streets may start experiencing daily parking issues like we've had on the 2600 block of Hackett, especially after St Mark's kicked residents out of their lot (who paid to park there, except on Sunday mornings and occasional other special events). Long-term residents will likely lose parking on their street, which some carefully plan for, or even sit and wait for.
- ** Assuming the "realistic estimate" of 127 new residents, and assuming second car ownership of 50%. 127 residents minus 55 car owners leaves 72 more possible car owners. At 50% car ownership, that adds that adds 36 more cars, for a total of 91 more residential cars. With only 69 parking spaces under the apartment unit, that leaves 22 more cars that must park on the street).
- Our mail carrier currently parks in St Mark's lot. Where will he reliably park when that lot is gone? Will his job be made more difficult, and will our mail service suffer?
 - In addition to existing residential parkers, many Downer Avenue employees park here regularly, as do shoppers and restaurant patrons, church attendees, etc. Many of these people will be forced to park further away. Might that affect businesses' ability to hire employees? Worse, will some shoppers/restaurant patrons be unwilling to walk further than they are used to, especially if they have kids in tow? Depending on the business, new apartment dwellers may or may not make up for potential lost sales.
 - There are already regular service people like housecleaners and yard maintenance people who need parking. Visiting friends and relatives need parking. Movers, electricians, plumbers, lock openers, handymen, small construction projects workers, pet sitters, plant sitters, furniture delivery, window washers, etc., are occasionally used by current residents, and parking is needed. Apartment dwellers will want parking for visiting friends and relatives (in fact, this demand might explode). Some apartment dwellers may also want housekeepers, pet sitters and others, all who need parking. Where will these extra people park?

- When people do return to their parked cars, they often get on their devices and sit there for several minutes while the next parker waits in the middle of the street to take their spot. This adds traffic and parking pressure, and this will become far more common as younger people move to the neighborhood. Younger generations are known to be heavy device users.
 - Typically, to lure renters, parking is offered free or at a reduced rate for the first year. What happens in Year 2 when that special deal usually disappears? Renters will have to pay extra for parking. A quick look at local rentals shows monthly parking rates of \$125 to \$175 a month. Given budget issues facing many people, how many more cars will that put on the street?
 - As just noted earlier, the design for St Mark's proposed addition has already designated two over-sized drop-off spots in front of their new entrance. How many additional spots might they decide they want? If they eventually ask for more designated parking on Hackett, will those requests be granted with o input from the neighborhood?
 - Snow emergencies require parking on only one side of the street. There are already people (not residents, who understand this issue and deal appropriately with parking during snow emergencies) who ruin 2-3 parking spots every winter because they don't move for the plows. Until the snow melts, those parking spots are gone. The cars that cause these problems usually don't get ticketed.
 - In fact, the city rarely monitors parking on Hackett, making parking more challenging for everyone who lives here.
- **The 2600 block of Hackett is simply too small for such a large apartment building.**
 - Apartment buildings of the proposed scale are only on major (often 4 lane) streets such as Prospect, Farwell, Downer, Lake, North, Locust, Oakland. There is a reason why they are RM6: the streets are big enough to handle them. They do not belong on tiny neighborhood streets like Hackett, for many good reasons discussed above. In fact, in Jim Shield's presentation for the Historic Preservation Commission the buildings he selected to compare his design for St Mark's 55-unit apartment are ALL on much larger streets, such as Downer and Lake, that already, and appropriately, have RM6 or higher zoning. Why is an apartment of this size being even proposed for this site?

We urge you to keep the zoning as RM3 and let appropriate building happen.

August 17, 2022

Kay Wosewick

You may wonder if, or how, I am qualified to write this analysis. After graduate school, I worked in marketing research for 18 years. I estimate that I designed, managed suppliers who executed the research, wrote topline analyses, then dug deep into the data to write detailed final reports with recommendations, for somewhere between 225 and 275 studies. I worked at three companies in increasingly responsible positions: R.J.R. Tobacco, Monsanto, and Ralston Purina (then a Fortune 50 company) where I rose to Director of Information Resources (marketing research plus sales analysis) in its Branded Foods Division. I had a staff of 8 professionals and a budget of \$2.2 million dollars in the late 1980s. After several years in management positions, I yearned to be a hands-on researcher again. The timing was perfect because companies were eagerly hiring 'consultants' who effectively filled staff positions. I did this at Ocean Spray, a large advertising agency in Boston, and then at S.C. Johnson. I quit the field after completing the most exciting, complex project I ever conducted. It was time to do something new. Now, I walk to work at my job in the Downer Business District.

Reset Form

Address of parcel(s): 2604 N. Hackett

Affidavit for Zoning Change

1. POLICY (s. 295-313). Each applicant for a zoning map amendment or approval of a planned development, and each applicant for a use variance or special use permit, shall submit to the city plan commission or the board of zoning appeals, as the case may be, a signed affidavit indicating whether the applicant is: (NOTE: DISCLOSE ALL RELEVANT AND REQUIRED INFORMATION ON A SEPARATE SHEET AND ATTACH TO THIS SHEET UPON SUBMITTAL)

- a. Delinquent in the payment of any property tax, special assessment, special charge or special tax due to the city, provided that all appeals of the tax, assessment or charge have been concluded or the time to appeal has expired. YES NO
- b. A party against whom the city has an outstanding judgment, provided that all appeals of the judgment have been concluded or the time to appeal has expired. YES NO
- c. A party against whom the city has outstanding health or building and zoning code violations or orders from the commissioner of health or commissioner of neighborhood services that are not actively being abated, provided that all appeals of orders to correct violations have been concluded or the time to appeal has expired. YES NO
- d. A party who has been convicted of violating an order of the commissioner of health or commissioner of neighborhood services within the past year, provided that all appeals of the conviction have been concluded or the time to appeal has expired. YES NO
- e. The owner of premises found to be in violation of s. 80-10 to whom the commissioner of neighborhood services has charged the costs of police enforcement pursuant to s. 80-10-4, provided that all appeals of these charges have been concluded or the time to appeal has expired. YES NO

2. NON-INDIVIDUAL APPLICANTS

- a. Corporations. If the applicant is a corporation, a duly authorized officer or director of the corporation shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each officer and director of the corporation as well as each shareholder owning 5% or more of voting stock, fits any of the descriptions in sub. 1-a to e.
- b. Partnerships. If the applicant is a partnership or limited partnership, a duly authorized partner, general partner or limited partner shall submit the affidavit required by sub 1. The affidavit shall attest to whether each partner, general partner and limited partner fits any of the descriptions in sub. 1-a to e.
- c. Limited Liability Companies. If the applicant is a limited liability company, a duly authorized member or manager of the company shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each member and manager of the company fits any of the descriptions in sub. 1-a to e.
- d. Nonstock Corporations. If the applicant is a nonstock corporation, a duly authorized officer or director of the corporation shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each officer and director of the corporation fits any of the descriptions in sub. 1-a to e.

Date at Milwaukee, Wisconsin, this 23 day of June, 2022.



Brooke Frizzell
Petitioner (signature)
Brooke Frizzell, authorized representative
(print name, relationship to project) for St. Mark's

Subscribed and sworn to before me
on this 23 day of June, 2022

Deborah A. Hall
Notary Public, State of Wisconsin
My commission expires: 12/06/23

Office Use Only: File no. 220401

Exhibit B