

33 East Main Street
Suite 500
Madison, WI 53703-3095

Mailing Address:
P.O. Box 2038
Madison, WI 53701-2038

Phone:
608.257.7181

Fax:
608.257.2508

www.murphydesmond.com

Matthew J. Fleming
Direct Line 608.268.5606
Facsimile 608.257.4333
mffleming@murphydesmond.com



4 April 2016

The Common Council of the City of Franklin, and
Mayor Steve Olson
9229 W. Loomis Road
Franklin, WI. 53132

RE: Ballpark Commons Development

Dear Mayor Olson and Members of the Council:

I represent the Stone Hedge Addition No. 1 Neighborhood Association and certain persons in the Hawthorne neighborhood concerned about the Ballpark Commons proposal.

The City of Franklin by approving the proposed rezoning and Comprehensive Plan amendments for the Ballpark Commons development is in danger of finding itself inextricably committed to what may very well prove to be a disastrous failure. The pressure to act on this proposal is the Developer's desire to build the baseball stadium in time for the 2017 season. The success of this entire development hinges on the stadium, but the stadium's physical and economic viability is completely unknown. Approval of this proposal presents many potential problems and pitfalls for the City. The City must hold off on granting any zoning approvals for this development until it has more answers about whether this development can realistically proceed.

Already overlooked is that the proposed Planned Development District application runs afoul of several provisions of the City of Franklin Unified Development Ordinance ("UDO"). Further, approving this application is likely to leave the City with a multi-family development it never wanted without ever getting the stadium or related commercial development that it seeks. Without knowing the true costs of development, the amount of public investment that will be required, the structure of that investment or the timing of development, the City runs the risk of creating several problems. These include unintended entitlements, inducements for additional public investments not at this time contemplated, as well as built-in financial incentives to de-prioritize the City's duty to protect the health, safety and general welfare of the existing neighbors of this development. With so much at stake, these important decisions should not be rushed on the basis of a Developer's unrealistic time-line.

I. UDO REQUIREMENTS.

In the rush to bring this proposal to a vote, it appears several provisions of the UDO have been overlooked.

- A. **Sections 15-3.0322 B. and Section 15-9.0208 E.2.** A developer is required to demonstrate that putting lands within a PDD District will “achieve a better design, identical or lesser intensity land uses (in terms of dwelling units, land use type, or GFAR and NFAR), and identical or greater OSR than that which is indicated on the adopted City of Franklin Comprehensive Master Plan maps.” Further the Plan Commission and Council are required to determine that the PDD “would not be contrary to the general welfare and economic prosperity of the City or the immediate neighborhood, and the benefits and improved design of the resultant development **justifies the establishment** of a PDD Planned Development District.”

Nothing in the Developer’s submissions that have been made public demonstrate why it is at all advantageous or necessary for this proposed development to occur in a PDD district. This failure is particularly stark for the development south of Rawson.

Moreover, not nearly enough information exists to make any determination about the potential negative impacts this development will have upon the City or the immediate neighborhood. It is not enough to simply say that the development must comply with City ordinances such as lighting or noise ordinances; particularly when the City is being asked to help finance the development. Once the City has a financial stake in the success of the development, the City will have a financial incentive to do whatever it can to facilitate whatever events the Developer will claim are necessary in order to make the development a success. Citizen complaints against, noise, light pollution and traffic will simply cease to be a priority.

- B. **Section 15-9.02028 E.3.e.** This section provides that:

The entire tract or parcel of land to be included in a PDD Planned Development District shall be held **under single ownership**. If there are two (2) or more owners, the application for such PDD Planned Development District **shall be filed jointly by all of such owners**. The PDD Planned Development District shall be considered as one (1) tract, lot, or parcel, and the legal description must define said PDD Planned Development District as a single

parcel, lot, or tract and so recorded with the Register of Deeds for Milwaukee County. **The PDD Planned Development District shall not be subdivided** unless no development occurs and appropriate steps and procedures are taken to vacate the district either by the or owners or the Common Council.

This section creates several impediments to approval of the requested rezoning:

(1) Judging by the staff report submitted to the Plan Commission, the owners of all of the subject property include the Wisconsin Department of Transportation, FF&E LLC, Frank & Sally Stanzer and Bradley Savage, but none are listed among the applicants. Thus a proper application has not even been filed with the City.

(2) Subdivision of the PDD is not permitted. The proposed development, however, almost certainly cannot occur without subdividing the property. For example, part of the proposal is for office buildings and a hotel south of Rawson Ave. No institutional lender, however, will typically finance a hotel or office building that is part of the same legal parcel as the multi-family development.

- C. **Section 15-9.0208 E.6.a.** A developer, in order to obtain PDD approval must be able to demonstrate that construction will begin within a “reasonable period following the approval of the change in zoning districts and that the development will be carried out according to a reasonable construction schedule satisfactory to the City.”

The nature of the entire PDD proposal, both north and south fail to satisfy this provision. It is completely unknown whether any of the new stadium or commercial development in the north can ever proceed. As for the development south of Rawson, the Developer’s own submittal (page 9 of the March 7 Amended PDD/GDP submittal) has indicated that the proposed office and lodging uses are **not** financially feasible. No projections are given as to when that may change.

The submittal speculates that the proposed baseball stadium and indoor sports facility lodging use “could generate enough stays” to justify the lodging, but even then it would be dependent upon stabilization of occupancy at the Hampton Inn. Given, however, that independent league baseball is both seasonal and an almost exclusively local draw, it is not at all clear why the Developer or anyone would ever think that the Stadium will generate hotel demand.

- D. **Section 15-9.0208 E.6.a.** If the south of Rawson development area is being considered as part of an overall “mixed-use” PDD, this section requires that the development “produces a unified composite.” There is little about the development south of Rawson that connects it to the northern area as “a unified composite.” The development cannot even function in common ownership within the boundaries of the southern portion alone, much less work as a unified composite with development on the north.
- E. **Section 15-9.0208 E.4.** To the extent any portion of this PDD is considered “commercial,” this section requires a demonstration that “the economic practicality of the proposed development can be justified.” As suggested in comment C., above, none of the commercial components of any of this development north or south have been justified.

II. THE CITY HAS HISTORICALLY OPPOSED UNPLANNED MULTI-FAMILY DEVELOPMENT.

Through the City’s Comprehensive Planning process, its citizens made it abundantly clear that multi-family development should be limited in the City. The neighbors of the 2014 Hickory Grove proposal were quite upset about the unfairness of changing the Plan, arguing that that they relied upon this plan when they purchased their homes. Alderman Steve Taylor, in a Facebook post dated December 11, 2014, in reference to a Franklinnow.com article about the rezoning proposal stated:

The residents are very upset and rightfully so. They feel strongly that they have been disrespected by the Mayor and I am in total agreement. **Franklin does not need any additional apartments and doing so will adversely affect these residents.** (Emphasis supplied).

He is further quoted in the article as stating:

These people bought these condos knowing they were going to be more condos added eventually, but not apartments. For many of them, their homes are their biggest asset they’ll ever have **and to pull the rug out from under them and allow apartments to be built is wrong.** (Emphasis supplied).

The City is now being asked to commit the same wrong against the residents of the Stone Hedge neighborhood. Why do these City residents not similarly deserve to rely upon the City’s Comprehensive Plan? Does it become ok to “pull the rug out from under them” simply because this multi-family proposal is piggy-backing upon another development proposal that under normal circumstances would never be viewed as being part of the same

integrated whole? Is an attempt to create tax increment for another development a sufficient land use justification to ignore the Comprehensive Plan?

If this proposal is granted, how many other developers are likely to come asking for Comprehensive Plan amendments? Even if there is little to no legal basis for such developers to compel a similar change, once the Council begins making drastic Comprehensive Plan amendments to accommodate specific zoning proposals, the political high ground is lost. It will become increasingly difficult to resist future compromises to the Plan.

It is important for the Council to seriously consider whether this proposal for multifamily housing south of Rawson would receive a moment's worth of favorable consideration if it was not tied conceptually to the development in the north. The City's Comprehensive Plan and existing zoning have established single family housing as the appropriate use for the land south of Rawson. The Developer has not given any reason to conclude that the City's existing planning and zoning for this area was in any way ill-considered or that the City will be better served by this zoning change.

III. ECONOMIC DEVELOPMENT IS NOT LIKELY.

"If you want to inject money into the local economy, it would be better to drop it from a helicopter than invest in a new ballpark." ~ Allen Sanderson, University of Chicago economist.

The Developer claims a need to rely upon zoning approvals in order to obtain financing to further this development. Aside from my experience suggesting this is flatly untrue, approval of this proposal carries a high degree of risk that the City will get multi-family development it did not really want or significant debt (or both) without ever getting the economic development being promised.

To play baseball in 2017, the City will need to provide financing to build the stadium before anything else is built. If the City wants to ensure it has any tax increment available to pay debt on the initial TIF loans, the multi-family housing cannot be approved contingent upon getting the stadium. The Developer will need to begin developing the multi-family housing this spring or early summer. This will need to begin before the legality, engineering feasibility or financial feasibility of constructing anything upon the landfill will even be known. This also likely means the City will be asked to make financial commitments before the answers to all these questions are provided as well.

What is going to happen when the Developer, in reliance on the zoning approval or financial commitments from the City, has begun to incur expenses? Disregarding any legal

issues, the political momentum to continue to proceed and perhaps commit additional public financing may be unstoppable. Legally speaking, however, while current case-law on the doctrine of vested rights remains highly favorable to local governments, those rules do not neatly apply to modern planned development processes are being tested in a variety of ways. It is very dangerous for the City to start down this road assuming it can pull the plug any time it becomes unsatisfied with how things are progressing.

Not only has there been no demonstration that the development to the north is physically or economically feasible, many reasons exist to believe that the stadium will not be possible. Moreover, even if the stadium becomes a reality, there is a great deal of evidence demonstrating that it will do nothing to spur the additional development that is being relied upon to justify the substantial public investments that will be required to build the stadium.

A. Environmental Impediments.

The obstacles to development posed by the landfill are well known. The waste in the landfill goes as deep as 40 feet. Not only does this make excavation of the site impractical, but because this waste has a history of differential settling, the likelihood of being able to place the foundation necessary for the stadium on the planned site becomes enormously challenging. Additional impediments including methane and other toxic gas accumulation in buildings and other enclosed structures, disturbance of the soil cap, utility lines acting as conduits for gas and leachate, dewatering problems, and worker exposure to unsafe and unhealthy conditions further complicate an already difficult proposition.

To some degree these challenges exist not just for the stadium, but for the remainder of the development to the north as well. If development challenges exist for the commercial and mixed use portions, it may be that more TIF assistance will be required in order to deal with these challenges and to permit the City to recover the initial TIF investment.

B. Uncertain Costs.

The environmental impediments also contribute to significant cost uncertainty. There seems to be no dispute that the baseball stadium cannot be built without public money. This reality exists even without the environmental issues posed by the landfill. According to the March 21, 2014 feasibility study by Johnson Consulting “[t]here is no way sufficient profit is made to support a team/tenant in a way that can fund the cost of the stadium out of team operations.” The feasibility study did not even take into account increased costs that result from the challenges posed by the landfill, unanticipated construction cost increases or the new and substantial road improvements proposed. There has also been no analysis of what

additional TIF assistance might be necessary to assist the remainder of the mixed use development.

As an example, the St. Paul Saints (a team in the very same league which the Developer's propose for their team) opened a new publicly funded stadium for its team in 2015. The total project cost was estimated to be \$54 million dollars. The actual cost turned out to be \$63 million due in large part to environmental problems with the site and the need to relocate facilities. Fans were promised that the new park would not cause an increase in ticket prices, however, substantial ticket price increases followed. Home-plate seats doubled in price. Upper level seats increased by 39%. Infield seats went up 24% and even outfield seating prices increased by 9%. The fans ultimately absorbed these increases given that prices hadn't changed for many years prior, but all of this money was spent for the benefit of a known commodity in St. Paul as the Saints have played in St. Paul since 1993. Will the ticket prices for Franklin's stadium necessarily be substantially lower than Brewer's tickets – particularly in light of the different stadium experiences?

C. Stadiums (Even If Successful) Typically DO NOT Promote Economic Development.

If the value of this proposal to the City is economic development, a baseball stadium, particularly one facing enormous potential construction challenges (if it is at all feasible) could not be a more risky choice. Study after study has concluded that stadiums do not provide any economic boost to local economies and do not support new ancillary development. Agha, Nola. "The Economic Impact of Stadia and Teams: The Case of Minor League Baseball." *Journal of Sports Economics*, 14.3 (2013), 227-252. Web. 2013, p. 4.

http://www.academia.edu/7267312/The_Economic_Impact_of_Stadiums_and_Teams_The_Case_of_Minor_League_Baseball

In fact, only the Agha study cited above appears to have found any positive correlation between construction of minor league stadiums and positive effects on local economic development. Interestingly, the positive effects were found only in relation to the major league affiliated team stadiums. With regard to independent league teams, no positive correlation, consistent with years of prior studies, was found.

Moreover, the study concluded that "teams can theoretically affect [municipal] income if they generate substantial new spending by out-of-area residents or discourage residents from spending outside the local economy. Both of these are more likely to occur in geographically isolated metro areas, especially small cities with few other entertainment options." The City of Franklin is anything but geographically isolated, and there are multiple

entertainment options competing for local dollars making it a less likely candidate for minor league success.

The City has been provided no evidence of any kind to suggest that minor league baseball is at all likely to draw those dollars to the area and should not proceed in any fashion until it has a study prepared by a firm of its own choosing and paid for by the Developer.

The Market Feasibility Study presented to the Stadium Task Force in March 2014, is little more than an advocacy piece submitted on the Developer's behalf. Rather than objectively lay out its data and conclusions, its funding outlook conclusions actively argue that financing the proposed stadium "**is a duty of community leadership!**"

Beginning at page 59, the Market Feasibility Study contained an economic development case study consisting of an analysis of 5 stadiums, ALL of the stadiums analyzed, however, were affiliated team stadiums, the unique subset of sports stadiums where the Agha study found positive economic benefits. Thus, the Market Feasibility Study was plainly misleading since the proposed stadium will not be for a major-league affiliated team.

Even among those stadiums, however, there was absolutely no proof presented that these stadiums promoted any economic development, or in some cases, even associated with any economic development:

- Pensacola, FL – more development was “anticipated,” but nothing of significance had yet materialized.
- Tulsa, OK – more development occurred, but no tangible connection was made establishing the stadium itself as a catalyst for development.
- Pearl, MS – an increase in retail development occurred, but that appears equally attributable to the construction of a Bass Pro Shop and Sam's Club, proven retail anchors, not the construction of a baseball stadium.
- Birmingham, AL – “time will tell if the development of this new baseball stadium will serve as a catalyst in redeveloping Birmingham.”
- Harbor Park, VA – restaurant and entertainment development followed increased residential development – not the baseball stadium.

Thus, even if the baseball stadium can be built, no reliable evidence exists that the baseball stadium will act as an effective “anchor” for the additional retail and mixed use development the developer promises.

The economics of an independent league team, in fact, suggest that promotion of ancillary economic development is not consistent with the business model. As described in the Wall Street Journal, (How Independent Baseball Teams Make Money, or Don't, Wall Street Journal, August 24, 2015) independent-league teams face greater challenges covering their costs since they cannot rely upon the deep pockets of their major-league affiliates:

That means teams often live on the razor's edge and must find creative ways to survive—holding promotions, signing former major-league stars and slashing expenses. Even then, many leagues fold and even successful teams spend seasons in the red; margins are so slim that rainouts or scorching days that keep fans away from home games can wreck a season.

In most cases, the teams are kept alive by owners who are either independently wealthy or have a basket of other businesses, and are prepared to swallow some losses for the thrill of owning a team. “In any league, I'd be surprised if over half the teams make money,” says Miles Wolff, commissioner of the American Association and Canadian American Association independent leagues.

Where a team struggles to cover its costs and make a profit, it cannot leave available dollars on the table to be spent outside the stadium or (to the extent additional mixed use is considered connected to the stadium) incur large capital expenditures on additional commercial structures to capture those dollars.

Madison, Wisconsin, provides a useful case study. Madison, since 1982, has had 4 different baseball teams. This alone highlights the difficulty in predicting the success of any minor league team venture. The Madison Muskies played for approximately 10 years, but had experienced steady declines toward the end of their stay. They were replaced by the Madison Hatters which lasted only one year. The Hatters were followed by the Madison Black Wolf who stayed for about 5 years, but struggled with attendance the entire time.

Not only did Madison cycle through three different teams through this period, there has been absolutely no additional commercial development or commercial activity in the vicinity of the stadium as a result of baseball. Warner Park has always been surrounded by significant pockets of commercial development that has muddled along to varying degrees of success totally unrelated to the fortunes of any minor league teams playing at Warner Park.

The Madison Mallards followed in 2001 had have been quite successful. Their success has been built largely upon 3 things: (1) amateur ball players; (2) on-field success; and (3) relatively inexpensive and good quality beer and food at the stadium. This combination of lower operational costs, a good product and getting people to spend money at the stadium has proved to be a winning combination. The Mallard's success, however, has not translated to any positive commercial development or redevelopment nearby. People come for the baseball and stadium experience and then, for the most part, leave the area.

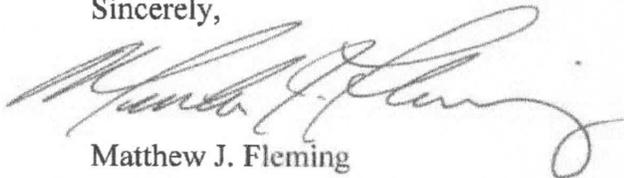
The team proposed for Franklin, however, will not be for an amateur team. Money will have to go toward paying these players. On-field success is obviously an elusive and totally unpredictable variable. Finally, dollars to be spent on retail or restaurants surrounding the stadium cannot be spent at the stadium to help finance team operations. There is little cause to believe economic development will result from a baseball stadium.

Despite all of this uncertainty, this is the first, if not one of the first buildings that will be constructed in this development. Most, if not all of the City's financial contribution will go toward making this stadium a reality with no guarantee or even demonstration of reasonable likelihood that the economic development the City wants and that is to justify its investment will ever materialize.

CONCLUSION

The City is being asked to move very quickly and is being offered no opportunity to think through all of the ramifications of its decisions. Approving the requested rezoning and Comprehensive Plan amendment at this time is very likely to leave the City with multi-family development, but none of the benefits it is being promised as a result. Accordingly, on behalf of the Stone Hedge Homeowner's association and neighbors in the Hawthorne neighborhood, I strongly urge you to either reject this application or, at least table the request until the City has all the information it needs to properly evaluate the entire proposal.

Sincerely,



Matthew J. Fleming

MJF:daz

cc: Attorney Matthew J. Frank