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Mr. Hector de la Mora  
von Briesen & Roper  
20975 Swenson Drive Suite 400  
Waukesha, Wisconsin 53186

Re: Church Unlimited Rezone

Dear Hector:

Per our conversation I have done a bit of digging regarding the issue of "spot zoning" and how it may affect my client's desire to rezone a portion of the property at Watertown Plank Road from Institutional to Residential. Here is what I found.

Spot zoning occurs when a single parcel is granted special privileges that are not extended to other land that is similarly situated. Spot zoning is permissible only when it is in the public interest and not solely for the benefit of the property owner. Under spot zoning one particular parcel is allowed to amend the zoning ordinance to be zoned differently than the surrounding area. (See, *Rodgers v. Menomonee Falls*, 55 Wis.2d 563, 572 (1972).

Wisconsin Courts have long said that "If there is any reasonable basis for the rezoning decision, it will be upheld." *Schmeling v. Phelps*, 212 Wis. 2d 898, 917 (1997). Criteria that the Courts have looked at in determining whether a rezone may be considered spot zoning include "whether the rezoning is consistent with long-range planning and based upon considerations which affect the whole community. The nature and character of the parcel, the use of surrounding land and the overall scheme or zoning plan are also relevant. Finally, the interests of public health, morals and safety must also be considered, as well as the promotion of public welfare, convenience and general prosperity. The concept of public welfare is broad and inclusive and embraces in comprehensive zoning the orderliness of community

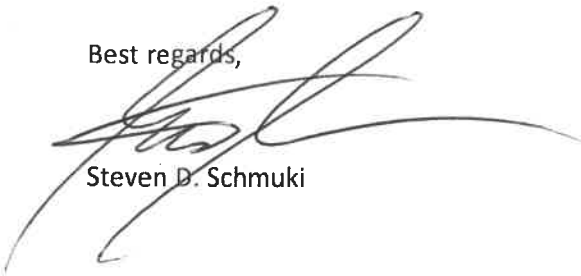
growth, land value and aesthetic objectives.” *Step Now Citizens Group v. Town of Utica Planning and Zoning Committee*, 264 Wis 2d 662 (2003).

Hector, we are not asking for anything here that would rise to the level of spot zoning. The use change is from a pocket of institutional zoning to a residential category in keeping with all the surrounding area. It would also be in the interest of the community in that it will put back on the tax rolls a single-family home that once was zoned the same as the surrounding properties, has been configured the same as it now is and will add to the community tax base.

It is well within the Planning Commission’s purview to recommend approval of the zoning change, comprehensive plan amendment and approval of the CSM. Likewise, I see no reason why the Village Board would not approve of such recommendation. Zoning is a matter of legislative discretion and is presumed valid, including amendments and should be liberally construed in in favor of the municipality. (See *Step Now*, supra citing *Cushman v. City of Racine*, 39 Wis. 2d 303,306, (1968); and, *Heaney v. City of Oshkosh*, 47 Wis. 2d 303,307, (1970).

Absent some kind of outcry from the neighbors I see no reason the Commission and Board can’t support this request. As mentioned at the conceptual approval meeting my client is anxious to move this forward, so anything you can do to help me in that regard will be greatly appreciated.

Best regards,



Steven D. Schmuki