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Office of the City Manager
312 W. Whitewater St.
Whitewater, WI 53190

To: Common Council
From: John Weidl, City Manager
Date: 9/6/2024

Re: Legal Clarifications on PARC Conditions and Conditional Use Permits (CUP) for Jake's Way

Dear Common Council Members,

I want to address recent concerns regarding the Planning and Architecture Review Commission's (PARC) handling of the Jake's Way application and clarify the legal standing of their conditions, as well as the nature of conditional use permits (CUP) under Wisconsin law.

After reviewing relevant legal documents, it is clear that the condition imposed by PARC on the Jake's Way development was not legally enforceable to restrict Section 8 and Section 42 housing vouchers. This restriction, imposed by the PARC on Jake's Way, is not only legally indefensible but also violates Wisconsin's Fair Housing Law (Wis. Stat. § 106.50), which explicitly prohibits discrimination based on a person's lawful source of income. Section 8 of the Housing Act of 1937 and Section 42 of the Internal Revenue Code are designed to provide housing assistance for low-income individuals and families. Section 8 provides rental subsidies, while Section 42 involves the Low-Income Housing Tax Credit (LIHTC) program, which supports the development of affordable housing. Further, Wis. Stat. 66.10015 might apply. It provides that "No city, village, town or county may regulate the amount of rent or fees charged for the use of a residential rental dwelling unit." Arguably, the restriction on sections 8 and 42 of housing could be considered a rent control regulation prohibited by this statute.

The statute is clear in its protection of individuals utilizing these programs, and the courts have consistently upheld the broad interpretation of these protections, as seen in cases like *Metropolitan Milwaukee Fair Housing Council v. Labor & Industry Review Commission*, 173 Wis. 2d 199. Additionally, Wisconsin courts have emphasized that municipalities cannot enact zoning regulations that circumvent state and federal anti-discrimination protections. As such, a condition that prevents Jake's Way from accepting Section 8 or Section 42 vouchers is not only discriminatory but also runs counter to public policy objectives designed to promote equitable access to affordable housing. Attempting to impose such a restriction is not legally tenable and could expose the City to litigation.

Now, I want to delve more into the specific issue of the conditional use approval. According to legal counsel, the Commission lacks the authority to deny an application based on conditions that are not measurable, reasonable, or grounded in substantial evidence. As noted in the analysis provided by our attorney, "any condition placed on a CUP must be based on substantial evidence and must be measurable" under Wisconsin Statute § 62.23(7)(de). In the case of Jake's Way, the applicant met all measurable requirements outlined in the city ordinance. Wisconsin law mandates that if an applicant satisfies all the requirements and conditions, the city has no



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discretion to deny the permit. It's important to recognize that once the conditions of a conditional use are met, approval is required under the law.

In summary:

- The condition placed by PARC regarding the acceptance of Section 8 and Section 42 housing vouchers is illegal under Wisconsin's Fair Housing Law and cannot be enforced.
- Conditional uses are not subject to arbitrary denial once an applicant has fulfilled the city's measurable conditions.
- The CUP for Jake's Way must be approved because the applicant has met all legal and zoning requirements.
- Any attempt to restrict housing developments from accepting government vouchers constitutes unlawful discrimination.

I trust this clarifies the legal situation and reinforces our obligation to follow state and federal laws as our PARC considers this application. I have attached the relevant legal opinions for your review and situational awareness.

Warmest Regards,

A handwritten signature in black ink that reads "John S. Weidl".

John S. Weidl, City Manager