



REPORT TO CITY PLAN COMMISSION

Plan Commission Meeting Date: January 9, 2017

Common Council Meeting Date: January 18, 2017

Item: Resolution #11-R-16 - Submitted by Alderperson Siebers

From: Don Harp, Principal Planner and Karen Harkness, Director

GENERAL INFORMATION

Resolution: #11-R-16 - Submitted by Alderperson Siebers

Whereas the R3 and CBD zoning of the 200 block of North Fair Street does not reflect the present usage of the properties along this street

Whereas the zoning of the properties of the 200 block of North Fair Street was done by the City in 1994, likely in hope that it would generate future development reflective of the zoning

Whereas no development on this block has taken place since the rezoning and those who own houses on this block, along with their alderperson, are not aware of any possible development pending in the near future

Whereas the property owners on the 200 block of North Fair Street desire that their properties be properly zoned according to their usage

Therefore, be it resolved, that the zoning of the properties in the 200 block of North Fair Street reflect the present usage of said properties.

Be it further resolved, that the Community & Economic Development Department identify other areas similar to the 200 block of North Fair Street, as it pertains to zoning, and if it is the desire of the property owners, properly zone these properties according to their usage.

2016 Special Assessment Policy: The special assessment policy establishes assessment rates based on how a property is zoned, not by how the property is used.

- In 2016, sanitary and storm laterals and mains were installed as part of the Fair Street Project. The properties on Fair Street are used as single-family and two-family residential dwellings but have a CBD commercial and R-3 multi-family zoning classification. Consequently, the property owners are required to pay a higher assessment for the installation of the sanitary and storm laterals and mains because of their current zoning classification per the current Special Assessment Policy. (See memo dated October 6, 2016 attached)

- For example, 210 and 214 N. Fair Street are used as single-family dwellings and are principal permitted and conforming uses in the R-3 multi-family zoning classification. These properties are properly zoned according to their use per the current Zoning Ordinance but are required to pay a higher assessment because they are being assessed by how these properties are zoned rather than how they are used.

BACKGROUND

On November 16, 2016, the Finance Committee discussed the refer back regarding the request from Alderperson Siebers to approve that special assessments for sanity laterals, storm sewer and storm sewer laterals for properties on North Fair Street that are zoned Commercial and R-3 with single family residential use be assessed as Single Family. This item was held until the January 24, 2017 meeting.

Link to View Video of Item 16-1585:

http://cityofappleton.granicus.com/MediaPlayer.php?view_id=3&clip_id=1711

On November 7, 2016, the Plan Commission referred the above-referenced Resolution to staff for analysis and report of the applicable standards of the Zoning Ordinance and the process to initiate a zoning map amendment (rezoning) by a resolution submitted by an alderperson.

On November 2, 2016, the Common Council referred back to the Finance Committee Alderperson Siebers' request to approve that special assessments for sanity laterals, storm sewer and storm sewer laterals for properties on North Fair Street that are zoned Commercial and R-3 with single family residential use be assessed as Single Family.

On October 25, 2016, the Finance Committee recommended denial of a request from Alderperson Siebers that special assessments for sanity laterals, storm sewer and storm sewer laterals for properties on North Fair Street that are zoned Commercial and R-3 with single family residential use be assessed as Single Family per attached Finance Committee Agenda and related materials.

Link to View Video of Item 16-1585:

http://cityofappleton.granicus.com/MediaPlayer.php?view_id=3&clip_id=1683

STAFF ANALYSIS

Current Zoning Classification and Use of the Subject Sites:

Subject Site (Address)	Parcel #	Current Use	Zoning Classification	Permitted Use	Legal Nonconforming Use
139 N Fair Street	31-5-1149-00	Single-Family Dwelling	CBD	No	Yes
202 N Fair Street	31-5-1136-00	Single-Family Dwelling	CBD	No	Yes
209 N Fair Street	31-5-1146-00	Two-Family Dwelling	CBD	No	Yes
210 N Fair Street	31-5-1134-00	Single-Family Dwelling	R-3	Yes	N/A
211 N Fair Street	31-5-1145-00	Single-Family Dwelling	CBD	No	Yes
214 N Fair Street	31-5-1132-00	Single-Family Dwelling	R-3	Yes	N/A
219 N Fair Street	31-5-1143-00	Single-Family Dwelling	CBD	No	Yes

- 210 and 214 N. Fair Street are currently zoned R-3 Multi-Family District and have been located in a multi-family zoning district since 1951. Single-family dwellings are principal permitted and conforming uses in the R-3 Multi-Family zoning classification.
- 139, 202, 211, and 219 N. Fair Street are currently zoned CBD Central Business District and have been located in a commercial zoning district since 1951. These single-family dwellings are not permitted uses but are legal nonconforming uses in the CBD Central Business District zoning designation. (See Note Below)
- 209 N. Fair Street is currently zoned CBD Central Business District and has been located in a commercial zoning district since 1951. This two-family dwelling is not a permitted use but is a legal nonconforming use in the CBD Central Business District zoning designation. (See Note Below)

Note: The single-family uses and two-family use noted above are permitted to continue based on Section 23-42(b)(5) of the Zoning Ordinance, which provides that in the case of natural disasters, property owners rebuilding essentially the same building should not suffer any loss of the use of property, provided it does not conform to current development standards (see below).

- a. A nonconforming principal or accessory building or structure may be restored or repaired to the size, location and use that it had immediately before damage or destruction occurred, and without regard to the cost of such restoration, repairs or improvements if both of the following apply:
 1. The nonconforming principal or accessory building or structure was damaged or destroyed on or after March 2, 2006.
 2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
- b. The size of such nonconforming principal or accessory building or structure or to which this subsection applies may be enlarged if such enlargement is made necessary for the principal or accessory building or structure to comply with applicable state and federal requirements.

Appleton Comprehensive Plan 2010-2030:

The purpose of the Appleton Comprehensive Plan 2010-2030: The City of Appleton's Comprehensive Plan establishes a vision for future land use, physical development, and quality of life in the City and provides a comprehensive set of goals, policies, and initiatives to achieve that vision. It is a coordinated and unified plan used to maintain and enhance conditions within the community and provide guidance on private and public development issues.

The City of Appleton Comprehensive Plan 2010-2030 Future Land Use Map identifies this area for future neighborhood commercial which may include a mix of office, neighborhood retail, and personal services on the ground floor of a building and residential apartment uses on the upper levels. The subject properties are appropriately zoned to further the purpose and future vision for this area of the City as identified by the City of Appleton Comprehensive Plan 2010-2030.

Purpose of Rezoning:

The purpose of a rezoning is to modify permitted land uses, yard setbacks, building heights and other requirements of the City's Zoning Ordinance for the development of a property, and to uphold the goals and objectives of the City's Comprehensive Plan.

Rezonings are justifiable under one or more of the following four circumstances per Section 23-65(d)(3) of the Zoning Ordinance:

1. When the requested rezoning is consistent with City's Comprehensive Plan.

Findings: Rezoning the subject properties based on use will not be consistent with the City of Appleton Comprehensive Plan 2010-2030.

2. When there was an error or oversight in the original zoning of the property.

Findings: Staff finds no evidence there is an error in the zoning map pertaining to how the subject properties are zoned or have been originally zoned.

3. When a study submitted by the applicant which indicates an increase in the demand for land in the requested zoning district.

Findings: No market study has been submitted with the resolution.

4. When the development cannot be accommodated by sites already zoned in the City due to lack of transportation, utilities or other development constraints, or the market to be served by the proposed development cannot be effectively served by the location of the existing zoning district(s).

Findings: New infrastructure has been installed in this area of the City to effectively serve the subject properties.

Zoning Map Amendment Procedure by Resolution:

The specific section of the Zoning Ordinance that applies in this case is Section 23-65(d)(1) and (2) Map amendments. The section reads as follows:

Section 23-65 (d) Map amendments.

- (1) *Proposal by Common Council or Plan Commission.* Amendments may be proposed by resolution of an alderperson submitted to the City Clerk to be forwarded to Plan Commission or by direct initiation by the Plan Commission. If the Plan Commission determines an amendment proposed by an alderperson is primarily intended to serve an individual or a narrow interest rather than the general public interest, it shall report such resolution with a recommendation that the benefiting party submit an application with appropriate fees. A resolution to initiate rezoning must be accompanied by the information required in subsection (2) that follows and shall be processed in accordance with the provisions of this section.

(2) *Application by owner or owner's designated agent.* An owner or owner's designated agent wishing to rezone his property shall meet with the Community and Economic Development Director to discuss the proposed rezoning. If the owner or owner's designated agent wishes to pursue a rezoning, they shall obtain, complete and file a rezoning application form with the City Clerk accompanied by a nonrefundable fee which may be amended from time to time, as established by the Common Council by resolution, to cover costs of public notice and administrative review. The application form shall contain, at a minimum, the following information:

- a. Applicant and property owner's name, address and telephone number.
- b. Parcel information, including tax key number, legal description, street address, if any, dimensions and existing zoning and land use.
- c. Present zoning district and use of the property.
- d. Proposed zoning district and description of proposed land use and/or structures.
- e. Justification for rezoning.
- f. Map of area, drawn to scale, outlining the parcel(s) requested for rezoning, identifying all adjacent streets, properties, existing zoning and present uses on all adjacent properties.

The second sentence in Section 23-65(d)(1) above (see underlined) is the operative sentence as it relates to the responsibility of the Plan Commission. This standard requires the Plan Commission to determine if a resolution for a zoning map amendment (rezoning) relating to the seven (7) properties identified above is intended to serve: 1) an individual, 2) a narrow interest rather than the general public interest.

The third sentence in Section 23-65(d)(1) above (*see bold underlined italic*) is the second operative sentence as it relates to a requirement that a resolution submitted by an alderperson to initiate the rezoning must be accompanied by a complete application for rezoning and the nonrefundable \$450 filing fee pursuant to Section 23-65(d)(1) and (2) of the Zoning Ordinance.

PLAN COMMISSION ACTION REQUIRED (Zoning Map Amendment by Resolution)

Pursuant to Section 23-65(d)(1) of the Zoning Ordinance, the Plan Commission's determination in this regard will decide what the next appropriate course of action would be.

Option 1: Resolution #11-R-16 proposed by Alderperson Siebers **BE DENIED** because rezoning the subject properties to a single-family or two-family zoning district would be contrary to the standards for zoning map amendments as required by Section 23-65(d)(3) of the Zoning Ordinance as stated in staff report.

Option 2: Resolution #11-R-16 proposed by Alderperson Siebers **BE DENIED** regarding the Community & Economic Development Department identify other areas similar to the 200 block of North Fair Street, as it pertains to zoning, and if it is the desire of the property owners, properly zone these properties according to their usage because it is not practical for staff to evaluate and determine if 25,431 parcels are zoned according to their use.

Option 3: Resolution #11-R-16 proposed by Alderperson Siebers to initiate a zoning map amendment (rezoning) for seven (7) properties along North Fair Street (139, 202, 209, 210, 211, 214, and 219 North Fair Street) *is primarily intended to serve an individual* rather than the general public interest and the benefiting party shall submit to the Community and Economic Development Department a complete application for rezoning and the nonrefundable \$450 filing fee pursuant to Section 23-65(d)(2) of the Zoning Ordinance.

Option 4: Resolution #11-R-16 proposed by Alderperson Siebers to initiate a zoning map amendment (rezoning) for seven (7) properties along North Fair Street (139, 202, 209, 210, 211, 214, and 219 North Fair Street) *is primarily intended to serve a narrow interest* rather than the general public interest and the benefiting party shall submit to the Community and Economic Development Department a complete application for rezoning and the nonrefundable \$450 filing fee pursuant to Section 23-65(d)(2) of the Zoning Ordinance.

Option 5: Resolution #11-R-16 proposed by Alderperson Siebers to initiate a zoning map amendment (rezoning) for seven (7) properties along North Fair Street (139, 202, 209, 210, 211, 214, and 219 North Fair Street) **BE APPROVED**, subject to a rezoning application and the nonrefundable \$450 filing fee pursuant to Section 23-65(d)(1) and (2) of the Zoning Ordinance being submitted and signed by all participating property owners to the Community and Economic Development Department.



City of Appleton

100 North Appleton Street
Appleton, WI 54911-4799
www.appleton.org

Meeting Agenda Finance Committee

Tuesday, October 25, 2016

4:30 PM

Council Chambers, 6th Floor

1. Call meeting to order
2. Roll call of membership
3. Approval of minutes from previous meeting

[16-1545](#)

September 13, 2016, September 21, 2016 and October 5, 2016 Finance Committee minutes

Attachments: [MeetingMinutes13-Sep-2016-12-32-46.pdf](#)

[MeetingMinutes21-Sep-2016-12-34-01.pdf](#)

[MeetingMinutes05-Oct-2016-12-01-23.pdf](#)

4. Public Hearings/Appealances

5. Action Items

[16-1548](#)

CEA Review Committee Report for September 20, 2016

Attachments: [MeetingMinutes20-Sep-2016-12-46-03.pdf](#)

[16-1585](#)

Request to approve request from Alderperson Siebers that special assessments for sanitary laterals, storm sewer and storm sewer laterals for properties on Fair Street that are zoned Commercial and R3 with single family residential use be assessed as Single Family.

Attachments: [Fair St Spec Assessment.pdf](#)



"...meeting community needs...enhancing quality of life."

MEMO

TO: Finance Committee

FROM: Paula Vandehey, Director of Public Works *PAV*

DATE: October 6, 2016

RE: Request from Alderperson Siebers that special assessments for sanitary laterals, storm sewer and storm sewer laterals for properties on Fair Street that are zoned Commercial and R3 with single family residential use be assessed as Single Family.

The Special Assessment Policy, adopted by the City Council annually, establishes assessment rates based on zoning, not usage. This philosophy has been debated many times over the 100 plus years of our Assessment Policy. The policy has continued to be based on zoning as it is an easily documented way to levy assessments versus use which could change without documentation (i.e. the City's parcel information includes a zoning category, but not a use category).

The properties being assessed as part of the Fair Street Project are as follows:

TAX ID	Owner's Name	Property Address	Mailing Address	Assessment	If Single family
5-1132	Stacey Staffeld	214 N. Fair Street	214 N. Fair Street	\$ 3,070.40	\$ 760.00
5-1134	Marc Daverveld	210 N. Fair Street	210 N. Fair Street	\$ 2,898.00	\$ 722.00
5-1136	Deanna Siewert	202 N. Fair Street	202 N. Fair Street	\$ 3,096.00	\$ 760.00
5-1143	Francine Rabideau	219 N. Fair Street	219 N. Fair Street	\$ 2,560.00	\$ 760.00
5-1145	Michael Weber	211 N. Fair Street	63 Bellaire Court	\$ 2,160.00	\$ 760.00
5-1146	James Christman ET AL	209 N. Fair Street	PO Box 2372	\$ 2,160.00	\$ 760.00
5-1149	Michael Laux	139 N. Fair Street	Mequon, WI	\$ 3,200.00	\$ 760.00
			TOTAL	\$ 19,144.40	\$ 5,282.00

Alderperson Siebers is requesting that the special assessments for sanitary laterals, storm sewer and storm sewer laterals for properties on Fair Street that are zoned Commercial and R3 with single family use be assessed as Single Family.

Attachment

July 4
September 5
November 24 & 25
December 23, 24, 25

Email Address * siebersw@yahoo.com
First Name: William
Last Name: Siebers
Address: 1109 N. Appleton Street
City: Appleton
State: Wisconsin
Zip Code: 54911
Phone Number 9207344204
Fax Number: Not answered

Comments/Questions

I have a situation in my district - 200 block of North Fair Street. Sewer and lateral work was done on the street. The block has a mix of zoning - mostly commercial - though all the usage is residential - and much is single family and on the low end of the value scale. Here is the problem, they got their assessment notices and at least two of them have stated that they feel the assessments are unfair when compared to assessments of areas nearby - because those properties are zoned residential. Is there any avenue these property owners can take in seeing if their assessments can be reduced? Alderperson William Siebers

Thank you,
Appleton, WI

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Fair Street

W FRANKLIN ST

N RICHMOND ST.

N STATE ST

N FAIR ST

CBD

219

R3

214

CBD

CBD

209 211

210

R3

CBD

202

CBD

139



12/12/16