



June 28, 2024

To La Crosse Common Council,

The REACH Center partners, through Couleecap, respectfully resubmit our application for zoning and request it be considered by Council due to a substantial change in circumstance based on the repeal of Section 115.86, which created artificial barriers to our original zoning petition for the same property.

When our original zoning petition was reviewed by Common Council, supermajority requirements had been stricken by the State of Wisconsin and directions to follow suit had been provided to municipalities. Not only were we unaware that this had occurred but more importantly, we were not aware that the City intended to come into alignment with state law eight months earlier than the required date of January 1, 2025, or one month after our petition was being considered. This is a factor Couleecap, as the petitioner, could not have accounted for or planned. Had we known city ordinances impacting our zoning petition would be repealed shortly after our petition was considered, we would have changed our petition filing timeline. Our zoning petition was simply disadvantaged by the order of the filings compared to the City's Ordinance 5284 to repeal Section 115-86.

To confirm our position that a substantial change in circumstance has occurred, we have sought legal counsel. Please refer to the attached memo from Moen, Sheehan, Meyer for additional information regarding the significance of the circumstantial change, factual information and timeline, and other information supporting our filing.

With the passage of recent amendments to Section 115-34, the circumstance in which zoning petitions like the REACH zoning petition are considered has changed significantly. Therefore, we submit the petition as allowed for such significant situations. Couleecap requests equitable opportunity to have our zoning petition considered by the Common Council without additional barriers now prohibited by La Crosse City ordinances and State Law.

Thank you for your timely consideration of this request and thank you for your service to the community.

Respectfully,

Hetti Brown
Executive Director



Kara M. Burgos §
Matthew R. Cromheecke*
Jessica T. Kirchner*
James Naugler
Joseph J. Skemp, Jr. *
Nathan P. Skemp*
David F. Stickler
Jalen D. Zubich

Michael E. Ehram, Of Counsel



MOEN SHEEHAN MEYER

Attorneys & Counselors Since 1853

"Trust us to be there for you."

201 Main Street, Suite 700
Post Office Box 786
La Crosse, WI 54602-0786
Telephone (608) 784-8310
Facsimile (608) 782-6611
www.moensheehanmeyer.com

* also licensed in Minnesota
§ Court Commissioner

June 25, 2024

REACH Services and Resource Center, to:

Couleecap, Inc. – Hetti Brown (Hetti.Brown@couleecap.org)

Scenic Bluffs Community Health Centers – Kim Hawthorne (KHawthorne@scenicbluffs.org)

YWCA – Roseanne Northwood (rnorthwood@ywcax.org)

RE: REACH – La Crosse Ordinance Section 115-34

Dear Ms. Brown, Ms. Hawthorne, and Ms. Northwood:

The REACH leadership team asked my opinion about whether a substantial change in circumstances existed to support Couleecap's refiling of a petition for rezoning related to its 11th Street South property, otherwise known as the REACH Center. For the reasons stated in this correspondence, I believe that a substantial change in circumstances does exist, and perhaps equally important, that the circumstances present no risk of REACH's abusive or wasteful resubmission of petitions for rezoning, which is the purpose of the one-year waiting period created by ordinances like Section 115.34.

A substantial change in circumstances exists to warrant permitting Couleecap to resubmit its zoning petition for the REACH Center within the otherwise prescribed one-year waiting period. The law that allowed additional hurdles to be included in the path of REACH's original zoning petition was repealed, creating a substantial change in circumstances. The purpose of ordinances like Section 115-34 (the one year waiting period) is to prevent an inefficient allocation of municipal resources. Specifically, it is intended to prevent a re-submission of identical petitions that require municipalities to dedicate resources when no factors have been substantially altered.

Indeed, Couleecap presents no risk of re-filing repetitious petitions. Rather, a bona fide substantial change in circumstances unfolded that warrants allowing Couleecap to refile its petition within the one-year period. The repealing of Section 115-86, particularly well before the required deadline imposed by the State of Wisconsin, created a substantial change of circumstance related to the original zoning petition for 212 11th Street South filed on 1/25/2024 and denied by the La Crosse Common Council on 3/14/2024. (See April 30, 2024 Email from City of La Crosse)

When Couleecap submitted its original zoning amendment petition, a supermajority was required, pursuant to the then-effective Section 115.86. At approximately the same time (but slightly after), the City of La Crosse commenced the process to repeal Section 115.86, its ordinance permitting the requirement of supermajority votes. The City of La Crosse had until January 1, 2025, to repeal Section 115-86, but it elected to pursue earlier implementation. Couleecap and REACH partners were not aware of the timing the City of La Crosse elected to propose the repealing of Section 115-86. From the publication of 2023 Wis. Act. 16, on June 23, 2023, there was a near 18-month window of municipalities' deadline on January 1, 2025, to repeal supermajority ordinances that were then-in-effect.

Couleecap is gaining no unfair advantage by being afforded access to the zoning process that is created through Ordinance 5294 (Section 115-34) and the repealing of Section 115-86. It merely affords an opportunity to make a zoning petition without the barriers that the State legislature declared were not in the interests of the State through 2023 Wisconsin Act 16.

Factual Background

The statutes and municipal ordinances at issue for consideration of REACH's resubmission of a zoning petition, including the timing of the final act relative to each, including the following:

1. June 23, 2023: State Legislature, 2023 Wisconsin Act 16

SECTION 4. 60.61 (4) (c) 2. of the statutes is repealed.

*Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

Stricken from Wisconsin Statutes per 2023 WI Act 16:

Wisconsin Statutes Section 60.61(4)(c)2:

A proposed amendment, supplement or change to the town zoning ordinance must be adopted by not less than a three-fourths vote of the town board if a protest against the proposed amendment, supplement or change is presented to the town board prior to or at the public hearing under subd. 1.

2. March 14, 2024: REACH Zoning Petition Denied

REACH (through Couleecap) submits Zoning petition in January, 2024.

March 14, 2024 - denied by a vote of 8-4-1 (voting ballot below)

3. April 11, 2024: City of La Crosse, Ordinance 5284 (Repeal of Section 115-86) (consistent with 2023 Wis. Act. 16)

Prohibition of Supermajority Requirement (Ordinance 5284, repealing Section 115-86)

Proposed Zoning amendment when presented set to become effective 1/1/25 (per proposed ordinance for J&A on 4/3/24)

Adopted effective upon its passage and publication (per Ordinance from J&A, Passed 4/11/24, Approved 4/15/24 and published 4/20/24)

4. June 13, 2024: City of La Crosse, Ordinance 5294 (Amending Section 115-34)

Re-Filing within One Year upon Substantial Change of Circumstances

Ordinance to allow subsequent zoning change petition within 1 year of original petition if substantial change in circumstances

Language includes:

After a petition or ordinance for rezoning of property has been heard and denied, no other petition or ordinance by the same owner affecting the same property or portion thereof, requesting the same change in zoning shall be filed, introduced or heard for a period of one year from the date of said denial, unless there is a substantial change in circumstances. The determination as to whether a substantial change in circumstances exists is in the discretion of the Common Council. Petitioner shall put the request for substantial change in writing and submit with the petition or ordinance re-filing to be considered simultaneously.

For comparison purposes, the votes of the Council members, for Couleecap’s original petition for the zoning change and the City’s proposed amendment for ordinance Section 115-34 are equivalent, if not, less favorable to REACH. There is no argument to be made that REACH is manipulating the circumstances to utilize a change in membership or other factors relative to the Council membership in order to abuse the petition process and gain an unfair advantage by being permitted to submit a petition before the otherwise prescribed one-year anniversary of its March 14, 2024, denial.

	Reach Zoning (March 14, 2024)	Re-Filing Timing
Dickinson	Yes	Yes
Goggin	No	No
Happel	No	No
Kahlow	No	No

Kiel	Yes	Yes
Hameister	Yes	
Janssen	Yes	No
Mindel	Yes	Yes
Newmann	Yes	Yes
Schwarz	Recuse	Yes
Sleznikow	Yes	Yes
Trost	Yes	Yes
Woodard	No	No
	8-4-1	7-5

The only modification to the Council membership was the loss of Janasea Hameister (the seat of which has not been refilled). Her departure from the Council membership is not beneficial to REACH, so no argument can be made that REACH is trying to capitalize on the change in Council membership.

The only change in circumstances, yet a substantial change in circumstances, was the repealing of Section 115.86, which created artificial barriers in Couleecap’s original zoning petition for REACH. While supermajority requirements had been stricken by the State of Wisconsin, and directions to follow suit had been provided to municipalities, their timeline for doing so was flexible, which is a factor for which REACH could not have accounted or planned. REACH was simply penalized by the order of the filings compared to the City’s Ordinance 5284 to repeal Section 115-86. With the passage of amending to Section 115-34, it gains no unfair advantage and poses no threat of abusive or repetitious filings – REACH is merely given the equitable opportunity to seek its zoning petition without additional barriers.

Best regards,

MOEN SHEEHAN MEYER, LTD.



Jessica T. Kirchner

jkirchner@msm-law.com

Enclosure