



May 11, 2010 – Walworth County Board Meeting

**Report of the County Clerk Regarding
Communications Received After the Agenda Mailing**

Board of Supervisors

The following items were placed on Supervisors' desks and are attached to this cover sheet:

- Communication – Email from Abbey Provident Venture, LLC regarding consideration of an ordinance amendment-Massage Establishment Provisions, Chapter 10, Article III of the Walworth County Code of Ordinances – To be referred to the Executive Committee
- Douglas County Resolution #28-10 – Request for State Law Change Allowing Counties the Use of Design-Build Construction Method– Previously referred and will be placed on file
- *Walworth County Senior Review*, May, 2010 – To be placed on file

Abbey Provident Venture, LLC

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(630) 784-1900 ■ FAX: (630) 784-1871

May 10, 2010

Via email to: Kbushey@co.walworth.wi.us

Kimberly S. Bushey
Walworth County Clerk
100 West Walworth Street
P.O. Box 1001
Elkhorn WI 53125

Re: Consideration of Ordinance Amendment

Dear Ms. Bushey;

As a follow up to my conversation with Michael Cotter, I am sending this letter to encourage the County Board to review and consider possible modifications to the Massage Establishment provisions of Chapter 10, Article III, of the Walworth County Code of Ordinances.

We understand and respect the need for such an ordinance to serve the public purpose for which it has been established. The ordinance as written however creates certain impracticalities as it relates to major resort spas such as those at the Abbey Resort, the Grand Geneva, and Lake Lawn Resort.

Many major resort properties are publically held. Grand Geneva for example is owned by the Marcus Corporation, which is publically traded. The Abbey is a limited liability company, a form of business which is not even addressed in the 1989 ordinance. The Abbey's ownership structure is quasi public with passive investors which have no involvement in the operation or control of the resort, much the same as the passive shareholders of the Marcus Corporation.

Section 10-107 of the ordinance requires that each shareholder of the corporation (whether passive or not), and each partner of the partnership (whether limited or not), submit not only the back ground information required by this section, but also provide both passport photos and a complete set of fingerprints. In major resort properties with extended and complex ownership structures, this requirement is both impractical and in many instances, virtually impossible to comply with.



THE ABBEY RESORT

In publicly or quasi publically traded companies, there could be thousands of owners, which change on some basis almost daily. These owners have no involvement in the management or operation of the spa, and should not be subject to the licensing requirements in the same way as owners of small, privately owned spas, which pose a much greater risk to allow the type of activity which the County intends to regulate by this ordinance.

It is possibly for this reason that the Massage Establishment Ordinance seems to be aimed at small scale spa operations, which may not otherwise be subject to the financial commitment, complex extended ownership structures, and other regulations that major resort spas are otherwise subject to.

Major resorts and hotels have extensive capital invested in their property and spa operations. This financial commitment of at risk capital creates a major disincentive, in and of itself, to permitting the type of illicit behavior or health concerns that the added regulation associated with the Massage Establishment Ordinance is intended to address. Additionally, major resort spa operations are subject to other laws and regulations in place at the State and municipal levels intended to protect the public health and safety, thus rendering the Massage Establishment Ordinance a potentially unnecessarily level of regulation.

It is for this reason that we would encourage the County Board to consider possibly exempting major resort spas from the licensing requirements of the Massage Establishment Ordinance, in much the same way, and for many of the same reasons, that hospitals, nursing homes, sanitariums or other health care facilities are currently exempted. In order to eliminate the potential for abuse that such an exemption could pose, it may be advisable to possibly put limitations on the required size to qualify under a major resort spa exemption, such as a spa associated with a resort with no less than 250 rooms. You might also consider having minimum income requirements associated with those exempt spas (i.e. revenue of not less than \$500,000 per year). The larger the revenue, the less likely that a spa owner would be willing to put that income stream at risk by allowing any type of illicit behavior to take place. We are not advocating eliminating the license requirements in place for individual therapists at major resort spas.

As an alternative to exempting major resort spas, consideration should be given to eliminating the requirement for background information, photos, and fingerprints for the passive owners of major resort spas, for the reasons set for the above. Correspondingly, the change in those owners should not render an establishment's license invalid, as is presently the case.

Finally, throughout the country, many major resort spas offer in room massages for those patrons who might be uncomfortable with the spa environment. In those instances, a licensed massage therapist brings a portable massage table to the patron's room, and performs the massage on the portable massage table. The ordinance right now prohibits in room massages which are common place throughout the country. To the extent that

major resort spas are not exempt from the Massage Establishment Ordinance, we would respectfully request that consideration be given to modifying the ordinance to permit in room massages by major resort spas.

Thank you in advance for the County Board's thoughtful consideration to this request. If the Abbey can facilitate the Board's consideration in any way, please feel free to contact me.

Sincerely,



Cary J. Kergel
Managing Member

CK/am

CC: Michael Cotter via email

RESOLUTION #28-10
RESOLUTION BY THE ADMINISTRATION COMMITTEE

Subject: Request for State Law Change Allowing Counties the Use of Design-Build
Construction Method

WHEREAS, under Chapter 59.52(29), Wisconsin counties are required to engage in a competitive bidding process on public work construction projects greater than \$25,000, and

WHEREAS, the State of Wisconsin has recognized the advantages of the design-build method and authorizes that process to be followed for state-controlled building projects, and

WHEREAS, under the design build construction method, counties would contract with a single entity to provide both the design and construction of a public work project, and

WHEREAS, in addition to a single source of responsibility, other advantages of design-build include enhanced creativity, guaranteed costs, faster project completion, improved risk management, fewer change orders and less administrative burden.

NOW, THEREFORE, BE IT RESOLVED that the Douglas County Board of Supervisors hereby requests that the Douglas County legislative delegation introduce and support legislation authorizing counties to utilize the design-build option.

BE IT FURTHER RESOLVED that upon passage, the County Clerk will send copies of this resolution to the Douglas County legislative delegation, the Wisconsin Counties Association, and all Wisconsin counties to solicit support for this requested change in State of Wisconsin law.

Dated this 8th day of April, 2010.

(Committee Action: Unanimous)

(Fiscal Note: None)

ACTION: Motion by Thompson, second K. Johnson, to adopt. Motion carried.