
OFFICE OF THE CITY ATTORNEY

To: The City of Madison Plan Commission
From: John Strange, Assistant City Attorney
Re: Undergrounding of Utilities in a Planned Development
Date: August 28, 2017

Staff has asked whether, in connection with the Planned Development being proposed at 1004-1032 South Park Street (Legistar File 45036), the Plan Commission can attach a condition that requires the applicant to underground all adjacent utilities. It is my understanding that the utilities subject to this possible condition are in the public right-of-way and lie on all sides of the subject property.

I do not know the reasons for this proposed condition and assume that they will be discussed tonight. In my opinion, for the Plan Commission to impose such a condition it must clearly articulate how the condition relates to the impact of the development and, more specifically, to the standards contained in Sec. 28.098(2). If it cannot clearly tie the condition to one of the standards contained in Sec. 28.098(2), then I would caution the Plan Commission against including it as a condition.

As part of that discussion, I would point out that the City cannot order Madison Gas & Electric or any other company to underground utilities, even if there is an entity willing and able to pay for the work. Thus, if it imposes such a condition, the Commission should consider what would or should result if one of the utility companies refuses to underground all or any portion of the adjacent utilities.