

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: March 15, 2006

**MEMORANDUM**

**TO:** Members of the Plan Commission

**FROM:** Anne Zellhoefer, Assistant City Attorney

**RE: LEGISLATIVE FILE ID 02720  
REZONING OF 2810-2818 TODD DRIVE AND  
2703-2805 WEST BELTLINE HIGHWAY**

At the February 20th meeting of the Plan Commission, the Commission recommended referral of the above-captioned item, which included the proposed demolition of approximately six buildings. Several members expressed hesitation in approving demolition for the proposed development because the applicant, at the time of the application and public hearing, did not yet hold title to the properties which it plans to demolish.

This circumstance arose because the City's Zoning Code allows for an application to rezone property to be made by a person other than the property owner if a unit of government (in this case the CDA) has approved a relocation order for the property. There is no requirement in the Zoning Code that an applicant seeking demolition own the property at the time of approval of demolition and rezoning by the Plan Commission. The City's Inspection Unit, however, which is charged with issuing demolition permits, will not issue a demolition permit until the applicant owns the properties subject to the permit. Plan Commission approval of a proposed project which will include demolition is one of several pre-conditions to the issuance of the permit by the Inspection Unit.

While the Plan Commission is charged with approving a plan for demolition that is a part of a rezoning, the ordinances give authority for the issuance of a demolition permit to the City's Inspection Unit. Section 28.04(22)(b) provides that, "No building as defined in Section 29.03 of the Madison General Ordinances shall be razed, demolished, removed or wrecked without a permit from the Inspection Unit of the Department of Planning and Development." The Inspection Unit shall not issue a demolition permit until: (1) the Zoning Administrator issues a zoning certificate for the proposed use of a property; (2) the Plan Commission has approved the requested demolition and proposed use; (3) the Recycling Coordinator has approved the applicant's plan for recycling materials from the buildings to be demolished; and (4) the owner of the property (emphasis mine) has paid a fee and signed a request form through which the owner agrees to the following conditions:

- (a) The owner shall excavate and expose the existing sanitary lateral or laterals on his property at the point where it enters public right-off-way or easement.
- (b) The owner shall notify the City Engineer at last twenty-four (24) hours in advance and shall allow entry on the property to plug the abandoned lateral or laterals.
- (c) The owner shall backfill the excavation with supervision of the City Engineer to insure no damage is done to the lateral plug by the backfill operation.
- (d) The owner shall pay the sum of twenty-five dollars (\$25) to the City Treasurer at the time of filing this form, to cover the costs to plug the lateral.
- (e) The owner shall assume all responsibility for any damage done to persons or property due to the abandoning of this lateral.
- (f) The owner shall satisfactorily comply with the above conditions within sixty (60) days after the date on the "Request to Plug Abandoned Sanitary Sewer Lateral" agreement form unless an extension of time, in writing, is granted by the City Engineer.

The City Building Code provides substantial penalties for any person who razes a building without a permit form the Inspection Unit or in violation of Sec. 28.04(22), Madison General Ordinances.

Please call me if you have any questions.

SUMMARY: The Plan Commission may approve a rezoning and demolition request prior to an applicant's owning the property proposed to be demolished. The Inspection Unit, however, may not issue a permit for demolition prior to the applicant's owning the property proposed to be demolished.

cc: Brad Murphy  
Timothy Parks  
George Hank  
Matt Tucker