M E M O R A N D U M

Date: January 9, 2026

To: Lisa Ernest, AICP, Planning Division
Kevin Firchow, AICP, Principal Planner
Meagan Tuttle, AICP, Planning Division Director
Michael Haas, City Attorney
Regina Vidaver, Alder, District 5

From: Alex Saloutos

CC: Plan Commission
Christie Baumel, Deputy Mayor
Jonathan Becker, Co-President, Sunset Village Community Association
James Ream, Co-President, Sunset Village Community Association

RE: **3205 Stevens Street (Legistar ID 90615) – Request for City Attorney Opinion and Referral**

The Plan Commission will consider the conditional use application for 3205 Stevens Street (Legistar ID 90615) as agenda item 4 at their meeting on Monday, January 12, 2026. The Staff Report states that the City Attorney's Office has advised the city "cannot require" the applicant to grant a public path easement as a condition of approval. This legal opinion is not in the public record, even though its conclusion was disclosed in the Staff Report, which is inconsistent with the Plan Commission's own Policies and Procedures Manual.

I request that the City Attorney's written opinion be provided to me and posted to the Legistar file, and that the Plan Commission refer this item to a future meeting. There is no realistic opportunity for the City Attorney's Office to produce the opinion, post it to Legistar, and allow the public and commissioners a reasonable time to review it before Monday's hearing.

I support the redevelopment of this property and increased density on this site. My request for referral is not about delaying or blocking the project; it is about ensuring that the commission and the public have access to the legal analysis that effectively determines whether the city can implement a key recommendation of the adopted neighborhood plan, one strongly supported by the neighborhood.

THE STAFF REPORT'S LEGAL CLAIM

The staff report states:

> *"[T]he City Attorney's Office evaluated the request for a public path. The Attorney's Office advised that the City cannot require the applicant to grant an easement and construct a public path with this conditional use request."*

This legal conclusion is central to the staff recommendation. The staff report itself notes that 24 public comments on this application address the pedestrian path, stating that commenters requested "the walkway along the east property line should remain in its current location and/or for the path to be repaved/maintained." The Hoyt Park Area Joint Neighborhood Plan[1] explicitly recommends that

[1] Hoyt Park Area Joint Neighborhood Plan (January 2014), available at https://www.cityofmadison.com/dpced/planning/documents/Hoyt_Neighborhood_Plan010714.pdf

the city "explore opportunities to create an enhanced dedicated public pedestrian and bike connection" on this site. I served on the steering committee for that plan, and maintaining the current path alignment and formalizing it as a public connection were priorities during the planning process, with overwhelming support from neighborhood residents who contributed input on the plan. The applicant now proposes to eliminate the southern portion of the existing path—a path used by neighborhood residents for decades—and replace it with a circuitous route that will negatively impact connectivity and use.

Yet the City Attorney's opinion supporting this conclusion is not in the Legistar file. Neither the public nor the Plan Commission has access to the legal analysis.

WHY THIS MATTERS

Wisconsin law grants municipalities broad authority to impose conditions on conditional use permits. MGO 28.183 expressly contemplates that the Plan Commission may impose conditions as part of conditional use approval, and MGO 28.183(6) establishes standards,[2] including that "adequate utilities, access roads, drainage, internal circulation improvements for pedestrians, bicyclists, public transit and vehicles, parking supply... and other necessary site improvements have been or are being provided." The city routinely imposes conditions related to these standards.

The staff report for this very application includes 69 recommended conditions—covering everything from landscape plans to bus stop amenities to stormwater management. Yet staff asserts, without providing the supporting legal analysis, that the city "cannot require" a public path easement.

The Plan Commission's own Policies and Procedures Manual addresses this situation.[3] It states that legal advice from the City Attorney "should not be released to third parties or discussed at a public meeting, unless the advice is in a formal memorandum that Planning Staff and the City Attorney intend be distributed to the public." By disclosing the conclusion of the City Attorney's advice in the Staff Report while withholding the analysis, staff have effectively elected to make this legal opinion part of the public decision-making process. Having made that choice, the city should complete the disclosure by formalizing the opinion in a memorandum intended for public distribution.

Without access to the City Attorney's opinion, the Plan Commission and the public cannot evaluate:

- The legal basis for the conclusion—whether it rests on constitutional takings concerns, statutory limitations, or some other theory.
- Whether this conclusion squares with the city's routine practice of imposing conditions on conditional use approvals.
- Whether the analysis considered that the public had used the existing path for decades.
- Whether the analysis considered that the applicant is affirmatively eliminating the path as part of this development, not merely declining to create a new one.

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[2] Madison General Ordinances § 28.183, Conditional Uses, available at https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=COORMAWIVOIICH20--31_CH28ZOCOOR_SUBCHAPTER_28LPR_28.183COUS

[3] Plan Commission Policies and Procedures Manual (April 24, 2025), p. 32, available at https://www.cityofmadison.com/dpced/planning/documents/PC_Policies_Manual.pdf

The Hoyt Park Area Joint Neighborhood Plan recommends that the city “explore opportunities” to formalize this connection. I would ask what exploration occurred. Did staff work with the applicant to find a path alignment that could work? Did staff evaluate whether the existing path could be preserved with modifications to the site plan? Or did the process begin and end with a legal opinion on why public policy goals cannot be achieved? Implementing adopted plans requires affirmative effort, not just legal review.

The applicant held pre-application meetings with staff on November 15, 2024, and July 17, 2025. The application was submitted on October 22, 2025. The city has been engaged with this project for over a year, yet the legal conclusion that the city “cannot require” an easement appears for the first time in the January 8, 2026, staff report, four days before the hearing. If the legal constraint was known earlier, why wasn’t it disclosed? If it wasn’t known earlier, what exploration of alternatives occurred before staff sought a legal opinion to foreclose the option?

These questions should be answered in writing and posted to Legistar before the hearing, with sufficient time for the public to analyze the responses and submit written comments. The public hearing format does not allow for meaningful engagement—speakers have three minutes, cannot ask questions, and cannot participate in the discussion. Staff providing verbal reports or answers to these questions at the meeting, whether before, during, or after the public hearing, forecloses the public’s opportunity to analyze and respond meaningfully.

The current owner acquired this property in June 2004. The Common Council approved the Hoyt Park Area Joint Neighborhood Plan in January 2014, following a robust public engagement process. To my recollection, the owner never objected to the plan’s recommendations regarding their property, including the recommendation to formalize the pedestrian connection. Having remained silent for a decade, the owner now seeks conditional use approval while proposing to eliminate the path that the plan recommended preserving.

The design approach taken adds a nominal amount of housing in open spaces on the site, requiring the elimination of the southern half of the path. A comprehensive, phased redevelopment of the entire property could significantly increase density while maintaining the integrity and connectivity of the existing path. The midpoint of the density range for this site is 55 dwelling units per acre, more than double the applicant’s proposal. The public is being asked to sacrifice a decades-old pedestrian connection in exchange for a project that underperforms on the very metric the density allowance was intended to achieve.

The applicant is seeking conditional use approval, a discretionary entitlement that must serve the public interest. Yet the public is not gaining from this proposal; it is losing. The proposal eliminates the existing path connectivity and replaces it with an inferior route. Meanwhile, the applicant achieves only 22.5 dwelling units per acre on a site where the Comprehensive Plan contemplates 20 to 90 dwelling units per acre. When the neighborhood plan designated this site for medium-density residential, the neighborhood accepted increased density in exchange for public benefits, including a formalized path connection. Instead, the applicant is barely meeting the minimum density threshold while asking the public to surrender a pedestrian connection that has served the neighborhood for decades. This is not the exchange the neighborhood agreed to when it supported the plan. And, it appears, City Hall isn’t fighting for it, either.

The City Attorney’s conclusion that the city “cannot require” a public path easement appears contrary to past practice. A referral would allow a reasonable time for a meaningful legal review of the City Attorney’s opinion and whether it is consistent with past practice.

THE TIMING PROBLEM

It's late Friday, January 9. The Plan Commission meeting is at 5:30 p.m. on Monday, January 12. Even if the City Attorney's Office were to release its opinion immediately, there would be a limited opportunity for the public or commissioners to review and respond to it before the hearing.

The compressed timeline extends beyond the legal opinion. The Staff Report itself was published on January 8, giving the public just four calendar days—including a weekend—to review a 19-page report with 69 recommended conditions before Monday's hearing.

This is not a minor procedural deficiency. Staff have asked the commission to accept a significant legal conclusion—one that constrains its authority to impose conditions—without providing the analysis that supports it. That is inconsistent with transparent, informed decision-making.

REQUEST

I respectfully request that:

1. The City Attorney's Office provides its written opinion on the public path easement issue.

2. The opinion be posted to Legistar (ID 90615) so that commissioners and the public may review it, and a copy be emailed to me.

3. If the opinion was provided verbally rather than in writing, the City Attorney's Office will reduce its analysis to writing.

4. Alder Vidaver urge the Commission to refer this item.

5. The Plan Commission refer this item to a future meeting.

There is no realistic opportunity to fulfill these requests before Monday's hearing. Even if the City Attorney's Office produced the opinion immediately, there would not be sufficient time for the public to review it and submit comments before the hearing. Meaningful public participation requires more than last-minute disclosure.

This request is not merely procedural. The City Attorney's opinion may be flawed, and the Plan Commission—upon reviewing the legal analysis—could conclude that it has the authority to require a public path easement as a condition of approval. That is a material outcome that affects this decision. The commission and the public cannot evaluate that possibility without seeing the opinion.

Thank you for your prompt attention to this matter.