

Community Development Block Grant Committee
City of Madison
City-County Building
210 Martin Luther King Jr. Blvd.
Madison, WI 53703
September 29, 2024

Re: Application of Sunnyside Development (Red Pine Coop)

Dear Committee Members:

We write in follow up to comments submitted by David Tipson and endorsed by Aileen Paguio relating to Sunnyside Development's application presented at the August 1, 2024 meeting of the Committee.

It has come to our attention that the current owner of Red Pine (aka 212 Merry Street), Christopher Burant, is being pressured to try and obtain an "easement by prescription" over our driveway. His attorney has raised the possibility of recoding a "notice" in the land records to that end.

The Committee should be under no illusion that recording such a notice is in any way tantamount to the actual establishment of a prescriptive easement. To the contrary, it is only a preliminary procedural step in the long, torturous and expensive court process by which Mr. Burant would have to prove that he had met the conditions of establishing a prescriptive easement against the owners' wishes.

Acquisition of prescriptive rights to property through adverse use is governed by Wisconsin Statutes § 893.28, which states in relevant part that "Any person who ... has made continuous *adverse* use of rights in the land of another for 20 years ... may *commence an action* to establish prescriptive rights under ch. 843." (Emphasis added.)

Thus, the statute clearly states that prescriptive rights may be established only by bringing an action in court. This could take years to complete even if successful.

But such an action is unlikely to be successful. The statute also clearly states that only a person who has made "adverse use" of rights in another's land can bring the action. "Adverse use" is a specific legal term describing what Mr. Burant would have to prove in court and does not mean any old use. In fact, the statute goes on to say that "*mere use* of a way over unenclosed land is presumed to be permissive and *not adverse.*" (Emphasis added.).

Thus, Mr. Burant--on top of all the other difficulties he would face in proving *continuous, adverse* use against a *series* of different owners *over a 20-year period*--would also have to overcome the presumption that his “mere use” of the way was not adverse. As the Wisconsin Court of Appeals has said:

“The law does not favor prescriptive easements because they necessarily work corresponding losses or forfeitures of others' rights. Thus, a person claiming prescriptive rights must present positive evidence to establish a prescriptive easement, and every reasonable presumption must be made in favor of the landowner.” *Hintz v. Magnuson* (internal citations removed).

It is worth noting that there is a significant chance that the underlying landowner’s title insurance will cover his costs in defending such a lawsuit, making it far less likely that the threat of a frivolous lawsuit will serve as a cudgel.

In summary. It may be years before Mr. Burant could complete the process of bringing an action in court to establish prescriptive rights, and Mr. Burant is unlikely to be successful in such a lawsuit. Again, we emphasize to the Committee that committing public funds towards development plans that are entirely dependent on the use of our driveway is extremely risky and could result in “stranded assets.”

Red Pine/212 Merry Street is an enormous parcel of land—much larger than both of our lots combined. All we ask is that Red Pine, which is planning a 40% expansion, use its own land for access rather than our eight-foot-wide driveway, which is already used by our two households and the three residential units in the 208 Merry Street building.

Yours sincerely,

Ailen Paguio and Dave Poklinkoski, owners of 205 Ramsey Court

David Tipson, owner of 209 Ramsey Court

Copy to: Alder Marsha Rummel
David Drapac, owner of 208 Merry Street

From: [Frater, Matt](#)
To: [Doing, Benjamin](#)
Subject: FW: Red Pine/Sunny Side Development Proposal
Date: Thursday, October 10, 2024 12:55:31 PM

Please add this to public comments for item 4.

From: IBEW Local2304 <ibew2304@att.net>
Sent: Monday, October 7, 2024 2:25 PM
To: Frater, Matt <MFrater@cityofmadison.com>
Cc: IBEW Local 2304 <ibew2304@att.net>; Rummel, Marsha <district6@cityofmadison.com>
Subject: Red Pine/Sunny Side Development Proposal

You don't often get email from ibew2304@att.net. [Learn why this is important](#)

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Hi Matt,

I understand that the Sunny Side Development proposal for 212 Merry Street (aka Red Pine) will be recommended for inclusion in the City Affordable Housing Funds for the capital budget.

This project is not without much controversy in the neighborhood as it was (1) proposed without any neighbor input and (2) has been presented to the city with factually incorrect information.

I'll just do some quick "fact checking".

My understanding is that this CDBG for Red Pine is conditioned upon them securing a recorded easement to indefinitely grant use of the private drive, Ramsey Court. I also understand the attorney for Red Pine offered to the committee a legal explanation of the easement situation which implies that the granting of an easement should be, essentially, a "done deal". This legal opinion is not correct nor the case.

It is also my understanding that the committee had concerns regarding the (commercial) operation of the sauna at Red Pine which resulted in the serious health hazard for the neighborhood. In a previous presentation to the committee, Red Pine provided a document indicating an established "agreement" with the neighbors regarding the operation of the sauna. Its true that there has been are recognized agreement but that is not what Red Pine provided to the committee. The agreement with the neighbors has the sauna operating during the winter months (November 1st - April 1st) and during this time it would be limited to one day per week (they picked Sunday). The document submitted to the committee indicates that the sauna will be operated throughout the year. Frankly, there would never be any year-round operation agreement like that with the neighbors of Red Pine and, in fact, when Red Pine unilaterally attempted to launch that new approach, they were soundly rebuked and the Red Pine owner, Chris Burant, put a stop to it.

We all love Chris (we've been neighbors for 34 years) and hope for the best for him in the sale of the Red Pine property. We look forward to an owner committed to affordable workforce housing, particularly in our neighborhood. However, the Red Pine/Sunny Side proposal has been problematic from the start and continues to be. Should Red Pine/Sunny Side fail to secure a recorded easement for this CDBG, we look forward to working with an honest party committed to affordable workforce housing.

Thank you.

In Solidarity,

DAVE

David Poklinkoski
205 Ramsey Court
ibew2304@att.net
608-770-8896

From: [Frater, Matt](#)
To: [Doing, Benjamin](#)
Subject: FW: Red Pine Merry St/Sunnyside
Date: Thursday, October 10, 2024 12:55:48 PM

Please add this to public comment for item 4

-----Original Message-----

From: annewalker@homelandgarden.com <annewalker@homelandgarden.com>
Sent: Monday, October 7, 2024 8:25 PM
To: Frater, Matt <MFrater@cityofmadison.com>
Cc: Rummel, Marsha <district6@cityofmadison.com>
Subject: Red Pine Merry St/Sunnyside

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Dear Matt,

Tomorrow night the resolution to support the CDBG for Red Pine and Sunnyside Development will go before Common Council. While I support affordable housing in the city, and especially in our neighborhood, I do have concerns regarding the wood-fired sauna that is on site.

The application that was submitted included a sauna "agreement" that does not accurately reflect the agreement that was made with neighbors. The wood-fired sauna produces quite a bit of smoke, and with houses so close to each other, it has filled homes, including mine, with smoke on many occasions. This is why Red Pine and neighbors agreed to seasonal use, from Nov 1 to April 1, once a week. The application misrepresents what was agreed upon. The lack of accuracy in the submission is of concern to me.

Best, Anne Walker