Plan Commission
Special Meeting of March 31, 2026
Agenda #4, Legistar 92445

Changing the zoning for single-family and 2-unit homes from PD to a standard residential zoning category is unlikely to have a significant impact.

- These homes are almost certainly covered by restrictive covenants, covenants which protect the community so that it remains attractive and which protect against structures, or other things, that are not compatible with the subdivision (e.g., many prohibit permanent clotheslines). Generally, those restrictive covenants automatically renew unless the homeowners vote otherwise. Generally, those restrictive covenants require more than 50% of homeowners to approve any changes to and some require more than 60%.
- Under the restrictive covenants, an architectural board needs to approve homeowner requested changes. That will continue even with a change to a regular zoning category.
- Even if the architectural board is dissolved or inactive, those restrictive covenants still apply unless the homeowners have voted to revoke.
- Other homeowners, in the same tract who are covered by the same homeowners association and restrictive covenants, have a right to enforce the restrictive covenants. Homeowners should not be led to believe that they can take full advantage of any new zoning without any risk.

> "In Wisconsin, this court has enforced private deed covenants on the theory that the common grantor imposed restrictions on each parcel of property sold, with a general scheme in mind of making the individual lots more attractive to all purchasers. According to this theory, even in the absence of privity of contract, another purchaser of land in the same tract may enforce the covenant when there is evidence to show that the original grantor inserted the covenant to carry out a general plan or scheme of development. The question, then, is whether the common grantor, Ahrens, placed the restrictive covenants in the deed for the purpose of carrying out a general plan of development, which was to insure to the benefit of other grantees." *Crowley v. Knapp*, 94 Wis.2d 421, 425, 288 NW 2d 815 (1980)

If the City really wants to open up more of Madison to recent zoning changes, such as ADUs, a broader view should be taken. Some of the issues that could be reviewed include the following.

- Traditional Residential-Planned zoning districts should remove the requirement for restrictive covenants (required if more than 50 housing units). These districts are intended to "incorporate the characteristics of existing traditional neighborhoods." Why should these districts that mimic the original old districts be protected by restrictive covenants while those original old districts are subject to change?

  28.053 - TRADITIONAL RESIDENTIAL - PLANNED (TR-P) DISTRICT

  (6) Submittal Requirements.

  > (a) After the effective date of this ordinance, a Master Plan shall be required for all TR-P projects that are proposed to be ten (10) acres or larger in size or those that will include fifty (50) dwelling units or more. All TR-P Master Plans shall include each of the following elements:
  >
  > …

3. Building design standards for the proposed development recorded in the covenants, conditions and restrictions for the subdivision, shall include:

a. Massing and composition of structures, orientation of windows and entries; doors and other elements of the facade, and primary facade materials and colors.

b. A process for the application of such building design standards, through an architectural review committee or similar review body.

- MGO 28.004(4) provides: "This ordinance is not intended to abrogate any easement, covenant or other private agreement. However, this ordinance applies if it is more restrictive or imposes higher standards or requirements than an easement, covenant or other private agreement."
  The ordinance could be modified to always give preference to the zoning code whether the code is more permissive or restrictive – at least on a prospective basis. Essentially, the zoning code would apply and the covenants would be limited to things not covered by the zoning code, like not allowing clotheslines.

- Madison could enact an ordinance prospectively limiting the length of covenants. For example, Minnesota limits, with exceptions, covenants to 30 years and Iowa limits covenants to 21 years. In Madison, there is at least one development (Whitetail Ridge) where the covenants were only in effect for 5 years – this ensured fairly consistent original development with the development reverting to just City regulation after 5 years. The ability to apply a time limit retroactively should also be explored.

- MGO 28.147, Negative Use Restrictions Prohibited as Against Public Policy, does not allow restrictive covenants to prohibit a drugstore or grocery on property where the owner has terminated operations. This is a matter of public policy. Similarly, the City could declare the housing crisis a matter of public policy and allow ADUs in any zoning classification where they are a permitted use regardless of any restrictive covenants, and clearly make the change applicable retroactively.

Much of the land for newer subdivisions is protected by restrictive covenants. Years ago I looked at District 12 and found that at least 61% of the lots for homes were covered by restrictive covenants. These areas will continue to have low density single-family because of the restrictive covenants (the Blackhawk and Greystone subdivisions had a whopping density of 2.8 units/acre). Because of the restrictive covenants, older areas of the City, particularly those built before 1950, will continue to gain more density while the newer areas will be allowed to retain their "distinctive style."

Respectfully Submitted,
Linda Lehnertz