

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

Date: June 11, 2025

MEMORANDUM

TO: City of Madison Common Council

FROM: Assistant City Attorney Kate Smith
City Attorney Michael Haas

RE: Confidential Attorney Client Communication Regarding Court Order Remanding Rezoning Decision at 6610 & 6706 Old Sauk Road, [Legistar File No. 834677](#)

The City's decision to rezone properties at 6610 and 6706 Old Sauk Road has been remanded by Judge Lanford **for the Council to put on the record the reasons for its vote using the standards required by state law and local ordinance. The remand will be on the agenda for the June 17, 2025, Council meeting.**

Judge Lanford did not make a finding about the "correctness" of the new zoning. Essentially, she found that the reasons cited in the record of the Council's discussion were not the reasons required by law to be used by a municipality when rezoning a property. The Court's decision is attached and will be available in the Legistar file.

Remand

On a certiorari appeal such as this, a judge examines the decision-making process of the Council and can make one of three decisions -- to uphold, reverse, or remand. A remand occurs when a court finds that the Council did not follow the applicable laws in some way, which is a curable defect, and returns the matter back to the Council to follow the law.

During a remand, **the Council legally cannot take new evidence**, which means there will not be public testimony for this item and the Council will be referred to documents that reflect the information that was before the Council at the time of its discussion on June 18, 2024. Basically, we are turning back the clock to the point of the meeting after public comment where the motion was made. Council can ask questions of staff and engage in discussion. This process is consistent with Judge Lanford's order and will be reflected in the agenda.

We recognize that many current Council members did not participate in the original

meeting and vote on this matter, so it is especially important that alders review the public comments and materials in Legistar which were available to the Council when the decision was originally made. In addition to the original materials, the Legistar file will include a transcript of the June 18, 2024 Council meeting and the [City Channel link](#) is available to review. The public comment begins at 1:38 and Council discussion begins at 5:51 in the video.

Rezoning Factors

Under state law, zoning map amendments must be consistent with the City's Comprehensive Plan. "Consistent with" means "furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan" under Wis. Stats. Section 66.1001(1)(am). The standards for zoning map amendments are found in Section 28.182(6) of the City's Zoning Code and state that such amendments are legislative decisions of the Common Council that shall be based on public health, safety, and welfare, shall be consistent with the Comprehensive Plan, and shall comply with Wisconsin and federal law.

Map amendments are considered by the Council after receiving a recommendation by the Plan Commission. Judge Lanford only remanded the item back to the Council and not to the Plan Commission, so the recommendation from Plan Commission continues to be from its meeting on June 10, 2024.

In this case, the applicable comprehensive plan is the 2023 Comprehensive Plan which identifies the future land use of the property as "LMR". The 2023 plan was amended by the West Area Plan, which was approved by the Common Council in 2024, but which did not change the LMR designation for this property. LMR provides for light to medium residential uses, generally thought of as the "missing middle," everything from single-family homes to three-unit row houses and small multi-family buildings, with densities of 7 to 30 units per acre and buildings up to three-stories tall.

However, the "Growth Framework" provisions of the 2023 Comprehensive Plan include provisions that allow large and courtyard multi-family buildings in LMR areas in "select conditions" at up to 70 dwelling units per acre and up to four stories tall. The Common Council further clarified factors to be considered for these more intensive Medium Residential (MR) uses in December 2023. There are three primary factors to be considered when determining whether larger buildings and greater density is consistent with the Comprehensive Plan for a site:

1. Relationships between proposed buildings and their surroundings and lot and block characteristics.
2. Natural features
3. Access to urban services, transit, arterial streets, parks, and amenities.

The developer's request to re-zone the property from a combination of SR-C1 and SR-C3 zones to TR-U2 requires that these factors be considered in determining whether the re-zoning is consistent with the LMR designation in the comprehensive plan.

Council Action During Remand

To be clear, Judge Lanford did not direct the Council to vote in either direction. Alders are free to vote in whatever way they choose but must ground their reasoning in the law as discussed above to be in compliance with the Court's order. The Council's discussion must focus on this framework: **what exactly about this property makes changing the zoning district to TR-U2 consistent, or not consistent, with the Comprehensive Plan?** Below is an example of how Commissioner Solheim at the Plan Commission meeting connected location features to the legal factors. Even if these factors are not persuasive to your vote, this is a good example of how evidence is connected to relevant legal standards.

I just wanted to note that, as outlined in our standards and in the staff report, that zoning map amendments must be consistent with our comprehensive plan and that the state law further specifies that consistency means that it furthers or does not contradict the objectives, goals, and policies in the comprehensive plan. And I do believe that this proposal does meet that definition and that it is consistent with our comprehensive plan.

As we have heard and read and know, this site is identified as LMR in the comp plan, and select LMR sites can be developed at a higher density, up to 4 stories and 70 dwelling units per acre. And I believe that this site meets those characteristics as being appropriate for that type of development.

When looking at those characteristics, first considering the building's relationship with surroundings and the lot and block characteristics, I would say it is very unique to have an almost-four-acre site in this area, and that does allow the building to have significant setbacks and also to be at a lower height. The massing is broken down into smaller sections. There is fencing.

And again, the clause in the comp plan allows up to consideration of 4 stories and 70 dwelling units per acre. This has been lowered to 3 stories and 37 dwelling units per acre. And there are other multifamily developments nearby, including those that are two stories with a pitched roof. I know that the developer quoted that, but I did notice that as well when I went by the site.

In terms of natural features, there are no significant natural features in the site that would merit this development inappropriate. And the storm water information is above and beyond and will continue to be reviewed at a very detailed

level by the City. Having gone through that experience myself, I can also vouch that it's very intense.

And in terms of access to services, transit, and amenities, there is frequent metro service at this site. There is access to parks, to schools. And although there is not retail right next to it, it's still in very close proximity via bike and bus and, of course, car too, a lot of nearby amenities at Hilldale and off the Beltline. So for those reasons, I am in support of the zoning amendment.

We want to caution against speaking during discussion unless you are connecting evidence to the factors that should be considered when finding consistency with the Comprehensive Plan. Judge Lanford's opinion made a point to find that, while there was much discussion about the project during the June 2024 meeting, little of it was relevant to the legal framework the City needs to consider when amending zoning districts. Also, as with other legislative matters, it is not a requirement that all alders need to speak or justify their votes.

The Court decision directs that the Council again consider the Plan Commission recommendation and articulate valid reasons for the Council's decision without considering new evidence. This means that it is not legally relevant that other land use applications were approved for the project and what stage they are in. Any developments after the June 18, 2024 Council decision cannot be considered as factors in the Council's new deliberations.

The project also involved a Certified Survey Map, a Demolition Approval and a Conditional Use ("CU") Approval. The same plaintiffs appealed the CU approval to a different branch of the Circuit Court and no decision has been made in that matter as of June 11, 2025. The developers obtained a legal raze permit based on its demolition approval, which allows them to remove principal structures (including their foundations) and return the ground to grade. The raze permit is valid regardless of the zoning of the property. No building permits have been applied for or issued at this time, and they cannot be issued until the rezoning matter is resolved. This information is not relevant to the map amendment standards and would be considered "new evidence" and we mention it only to clarify that, to the City's knowledge, no illegal construction activity is taking place on the property. Again, the Council's responsibility is to turn back the clock to the point where the Plan Commission recommendation is before it and public comment has been completed, not to consider subsequent events or developments.

Finally, a significant amount of time during the 2024 Council meeting was devoted to discussing stormwater management and that the developers did not have an "approved stormwater management plan." Stormwater management is regulated by the Engineering Division and its

authority pursuant to Madison General Ordinances Chapter 37. The stormwater management plan submitted by the developer was, at that stage, voluntary and the fact it was not completed and approved by Engineering was not a lawful basis for deciding a rezoning. Rezoning decisions related to development projects are typically made prior to the approval of stormwater plans by the Engineering Decision. Currently, the project does have an approved stormwater management plan that was approved in May 2025. The now-approved plan is not relevant to the rezoning decision and would be considered “new evidence,” but we want to clarify the current situation. While the stormwater management plan has been approved, it would not be effectuated until the building phase.

We hope this information helps the Council to evaluate the rezoning request in light of relevant legal factors and the Comprehensive Plan. If you have any questions regarding this matter prior to the Council meeting, feel free to contact Assistant City Attorney Kate Smith.