



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Approved SUSTAINABLE DESIGN AND ENERGY COMMITTEE

Tuesday, September 23, 2008

4:00 PM

215 Martin Luther King, Jr. Blvd.
Room 300 (Madison Municipal Building)

CALL TO ORDER / ROLL CALL

Present: 13 -

Satya V. Rhodes Conway; Judy Compton; William Bremer; Sherrie Gruder;
Michael J. Vickerman; Paul D. Muench; Julia D. Voss; Catherine E.
Mackin; Garrick R. Maine; David C. Boyer; James D. Armstrong; Lou W.
Host-Jablonski and Ashley A. Brenke

Absent: 2 -

David W. Drummond and Peter J. Taglia

Excused: 2 -

Lance T. McGrath and Leslie C. Schroeder

Others present were Jeanne Hoffman, Kitty Noonan, Kay Schindel and George Hank.

APPROVAL OF MINUTES

The minutes from the August 11th meeting were approved.

Satya Rhodes Conway moved to re-refer the minutes to the October meeting so that all of the edits could be made to the minutes before they are approved.

PUBLIC COMMENT

Linda Karr of 4205 Elinor Street Madison 53716

Spoke regarding item #11080. She wanted to make three points.

She lives on the east side and lives 16 feet from a wood boiler. Her neighbor burns wood from Oct-May and sometimes in the summer. These boilers are cheap and people do this to save money. She indicated that she has issue with breathing and she asked that the City ban all current boilers.

She emailed the DNR and according to DNR 35 municipalities have adopted OWB bans. She has sent this information to the Mayor's Office and the Health Dept. She also indicated that the DNR indicated that these bans are for residential boilers.

Sherrie Gruder also indicated that Joel Creswell of 1338 Rutledge #1, Madison 53703 was available to answer questions on item number #11480.

Sherrie Gruder asked if it is OK with the committee to take #11480 out of order because the Water Utility Board is meeting at 4:30pm

Lou Host Jablonski moved and Satya Rhodes Conway second the motion to take #11480 out of order. The motion was unanimously approved.

DISCUSSION ITEMS

11077

Amending Sec. 28.03(2), creating Sec. 28.04(18)(e); repealing Secs 28.08(2)(c)16., 28.08(9)(c)5., 28.08(11)(c)9., 28.12(13)(a)10.d.; renumbering current Secs. 28.12(13)(a)10.e. through g. to Secs. 28.12(13)(a)10.d. through f., respectively; amending Secs. 30.01(3)(b)5., 30.01(5)(b); repealing Secs. 30.01(9)(c)9. and 11.; renumbering current Sec. 30.01(9)(c)10. to Sec. 30.01(9)(c)9.; amending Sec. 30.05(2); repealing Sec. 30.05(5); renumbering current Secs. 30.05(6) through (17) to Secs. 30.05(5) through (16), respectively; amending Sec. 30.05(9); repealing 30.05(11)(e); creating new Sec. 30.05(13)(d); renumbering current Secs. 30.05(13)(d) through (f) to Secs. 30.05(13)(e) through (g); creating new Secs. 30.05(13)(h), 30.05(15)(b), 30.05(15)(c); renumbering current Secs. 30.05(15)(b) and (c) to Secs. 30.05(15)(d) and (e); and repealing Sec. 33.19(12)(d)3.; renumbering Sec. 33.19(12)(d)4. through 11. to 3. to 10.; repealing Sec. 33.19(12)(f)1.f.; renumbering Sec. 33.19(12)(f)1.g. to f.; repealing 33.19(13)(d)8. and renumbering Sec. 33.19(13)(d)9. through 13. to 8. through 12., respectively of the Madison General Ordinances to update provisions relating to solar/wind systems.

Attachments: [Info.pdf](#)
[Memo dated May 2008.doc](#)
[SolarOrdinanceReport070908.pdf](#)
[Ordinance_explained.pdf](#)
[solarestriction.pdf](#)
[Excel Noise Test.pdf](#)
[Windletter_Renew.pdf](#)
[Permit_Process_Historic.pdf](#)
[Permit_Process_UDC.pdf](#)
[Written Comment from the August SDE Meeting.pdf](#)
[Memo dated August 2008.pdf](#)
[SolarOrdinanceReport090308.pdf](#)
[Draft Substitute 100108.pdf](#)
[Add Comment 100608.pdf](#)
[Version 1.pdf](#)

Sherrie Gruder indicated there are a lot of documents to review and that this topic was discussed at our last meeting. Sherrie Gruder asked the committee how they wanted to proceed.

Satya Rhodes Conway moved approval and Michael Vickerman second the motion to approve.

Satya Rhodes Conway had two amendments.

At the bottom of 2. (e) 1

a. A small wind energy system shall be located at a distance no less than its total height from:

i. any public right of way, unless an easement is granted by the government entity with jurisdiction over the public right of way;

ii. any overhead utility lines, unless an easement is granted by the affected utility;

iii. all property lines, unless an easement is granted from the affected land owners.

Lou Host Jablonski second the motion and offered a suggested that we add the words "mounted on a tower" to describe the wind system. The maker of the motion considered this friendly. The entire committee considered this amendment friendly.

Sherrie Gruder wanted it stated for the record that wind turbines are very sturdy and they are sturdier than a tree and the City does not restrict trees. However, she is comfortable with this because Madison does not have a good wind resource and has too many trees and buildings to successfully site wind in the City.

Michael Vickerman added that this amendment does make provisions that would allow a wind tower if people understand the issues and MGE might not object because they understand the issues.

Satya Rhodes Conway then moved her 2nd amendment
At the bottom 2. (e) 1 but before the above amendment

Some development that includes solar or wind energy systems may also require approval under other ordinances, including but not limited to Planned Unit Development approval by the Plan Commission, Urban Design Commission, and Common Council; some construction in Urban Design Districts; and Certificate of Appropriateness Approval by the Landmarks Commission.

Satya Rhodes Conway moved and Lou Host Jablonski seconded.

Satya Rhodes Conway indicated that this amendment means that there is a process and that these projects will still go through.

Sherrie Gruder asked if this is approved by the City Attorney's Office and Satya Rhodes Conway indicated that it was drafted by the City Attorney's Office.

Paul Muench asked if this language impacts the ordinance?

Kitty Noonan indicated that it does not. This is a zoning ordinance. There are other processes in our zoning ordinances, like a PUD, that still exist and that projects will still need to get those approvals. This language helps to clarify that. Just because you have solar project doesn't mean you will not go through the process for a PUD or other types of projects too.

Paul Muench ask if by going through the process will these projects be able to reviewed that contrary to this ordinance? Kitty Noonan stated no. That is not the intent; the intent is for these projects to still go through the design process.

Judy Compton stated that she doesn't support this because this language doesn't do anything and does not provide any process for someone who has a health and safety issue to come to a public hearing. We should table this

because of the proposed state statute that is currently being discussed at the state level and then we may need to change this ordinance again, so we should wait.

Judy Compton also stated that we don't have the right to deny but we do need to let the public speak. Finally, she suggested that we deal with solar now and then deal with wind next.

Satya Rhodes Conway asked Kitty Noonan to speak regarding approvals to other accessory uses.

Kitty Noonan stated that it depended on what type of accessory use. With the chicken ordinance the owner needs to notify neighbors within a 200 feet radius. The issue that she has regarding notification is that if this is not a public health issue and the City can not deny this, then the idea of having a public hearing sets up a false expectation because there is nothing the City can do if there is not a clear public health issue. And again, if one person comes in with a health issue that does not mean there is a public health issue.

Kitty Noonan suggested that the ordinance could identify other public health and safety issues like the wind tower amendment and that they could be added to the draft, but it has to be recognized as a public health issue, such as there are noise issues and there could be noise limit provided.

Kitty Noonan again suggested that simply notifying someone when there is not opportunity to change the outcome is notification that gives a false promise.

Satya Rhodes Conway stated that generally she likes more public notification, but that she believes that this issue needs to be addressed through the re-write of the zoning code. There is a continuum of approval in the zoning and there is a continuum of notification and this should be something that is done through the zoning code re-write because we need to look at public notification all together...chickens, wind turbines, etc. She feels that we will get a better process if we deal with public notification as one item in the zoning code re-write process. Finally, this is not the place to make this type of change. This committee could ask the Zoning Code Rewrite Committee to look at this.

Lou Host Jablonski asked about the state statutes that Judy Compton referred to.

Michael Vickerman stated that this law, which Renew Wisconsin is working on, will have no impact on the City's ability through this ordinance because the state statute that is being considered is for standards for commercial systems. The state's likely action is not regarding residential wind development – but commercial wind development.

Judy Compton stated again that it was her understanding is that there were changes that will address residential wind too. She also stated we need to talk about public safety and that there needs to be a process so that the neighbors can be heard, just like conditional use, there is still a process.

Satya Rhodes Conway stated that this is a permitted use we don't have hearings for permitted used.

Judy Compton indicated that there could be a new type of process. She also indicated that she has more issues with wind. Solar is ok.

Sherrie Gruder asked if there was additional discussion and seeing none she asked for the amendment to be read again. Satya Rhodes Conway read the amendment.

Some development that includes solar or wind energy systems may also require approval under other ordinances, including but not limited to Planned Unit Development approval by the Plan Commission, Urban Design Commission, and Common Council; some construction in Urban Design Districts; and Certificate of Appropriateness Approval by the Landmarks Commission. Garrick Maine asked if this language help anything?

Jeanne Hoffman stated that this language helps to explain that that UDC and other committees will still be able to review projects.

Judy Compton asked does this language do anything?

Kitty Noonan stated that the language helps to clarify that projects still need to go through the process whether it is a PUD or other process.

Lou Host-Jablonski indicated that as a UDC member, this does provide clarification. For many projects that UDC deals with, all elements of the project are in play this language clarifies that.

The 2nd amendment was approved with everyone voting for it except Paul Muench.

Lou Host-Jablonski then asked a question regarding the 20% shading. Kitty Noonan stated that this ordinance change is not just zoning codes but all codes including building codes to bring them up-to-date. Satya Rhodes Conway asked for George Hank to talk on this.

George Hank indicated that the 20% shading is a consumer protection provision. That the City should not base ordinances on state grants that may not be there in the future.

Sherrie Gruder stated that the language sounds like this is a mandate.

Kay Schindel and George Hank indicated that the language shown is only the change. With the current language it is clear that if the owner signs off that he/she knows the shading is more that 20% then they can proceed with the project.

Michael Vickerman wanted to know what happens to the form?

George Hank indicated that it goes into building file.

Michael Vickerman asked why isn't there something in there about angle of the systems.

Kay Schindel indicated that that is already addressed in the code. The reason for the 20% change was to make this simpler and this doesn't prevent anyone from doing it.

Lou Host Jablonski suggested that we should create a brochure instead and lets eliminated this language and come up with a booklet with best practices.

Satya Rhodes Conway did state that this language is much better than the original language. So we either delete the language all together or accept staff's language.

Michael Vickerman made a motion to delete section 12. (2). Regarding the 20% shading. Judy Compton seconded the motion.

Judy Compton suggested that we ask that this be deleted and Plan Commission deal with the draft.

Sherrie Gruder indicated that this language does not do any harm.

Satya Rhodes Conway asked George if there is consumer protection throughout the code?

George Hank indicated that consumer protection is throughout the entire code by stating minimum standards such as insulation standards. This consumer protection is in both the state and city codes, however there are places where the City can be more restrictive.

Lou Host-Jablonski asked how far you go with consumer protection in the code and where do you stop.

George Hank indicated that a lot of this language was added during the last energy crisis and that the intent was to make sure that the City had the ability to stop bad practices.

Sherrie Gruder stated that this issue is not just in the HVAC areas of the building codes that there are issues with other sections and that we should be using the best technology. She also stated that Focus on Energy is working on standards.

George Hank stated that if we take all of this out, then there would be nothing the City can do to stop bad contractors because the City needs laws that can be enforced. He further stated that if there was a set of standards for solar thermal that the City could point to – that the City could use this set of standards, but to his knowledge this does not exist. He also stated that the City does use adopted standards for other areas of the code. He again added that if something like that existed for solar thermal, that the City could use that.

Judy Compton asked George what does the BI inspectors look for?

George Hank indicated that BI inspectors inspect for all state and City codes.

Satya Rhodes Conway explained that Chapter 30 deals solely with solar systems and that it is quite extensive. She suggested that unless this

committee wants to rewrite this entire section, which she does not recommend, that the committee should accept staff recommendations.

Michael Vickerman then amended his motion to completely strike 30.05 (2) entirely and to also delete section 30.05 (1) d... the words... and the shading percentage. Sherrie Gruder seconded the motion.

Jeanne Hoffman asked if it helps BI to have this documentation?

George Hank again stated that the main purpose of this language is consumer protection and to make sure that the owner knows that the solar thermal system is shaded 20% or more.

Sherrie Gruder and Michael Vickerman both indicated that Focus on Energy does this already.

George Hank again stated that the City ordinance should not rely on a state program that may not continue and that it is OK for now because Focus on Energy does a good job, but they might not be there in the future. Finally, the City does not change its ordinances very often so the idea of coming back and updating it later is a good idea that does not happen very often.

Judy Compton called the question.

The amendment passed with Garrick Maine and Satya Rhodes Conway abstaining.

Judy Compton proposed an amendment to delete 2. 2. The provision that deals with restrictive covenants. Michael Vickerman seconded the motion.

Judy Compton stated that she has a problem with this section. This is not needed, as there is already a statute that deems it illegal to prohibit renewable energy systems through restrictive covenants.

Garrick Maine asked Kitty Noonan to speak to this issue.

Kitty Noonan stated that there is a state statute where you cannot restrict these systems through restrictive covenants. The idea of putting this in our ordinance is that the City would/could become involved in what would otherwise be a private legal matter. The City would only become involved through a forfeiture of some kind, but it certainly helps everyone know that these provisions in restrictive covenants are not legal.

Judy Compton again stated that this language does not need to be there because a state statute already exists.

Kitty Noonan stated that if the City wanted to become involved in this through enforcement, then the City would need this language in our ordinance to allow for enforcement. The likely enforcement would be through a citation of some kind. The City does not enforce state statutes.

Bill Bremer indicated that he wants to keep this language in the ordinance because it supports to the property owner and encourages solar.

Michael Vickerman asked that if the City included this language would the City have the power to stop these restrictive covenants.

Kitty Noonan indicated that the City would and then gave the example of grocery stores restrictive covenants where if a grocery went out of business, other grocery could not lease that space. The City passed an ordinance to prohibit that practice.

Lou Host-Jablonski called the question.

Judy Compton voted yes
Michael Vickerman abstained
The rest of the committee voted no.

Motion is not approved.

Sherrie Gruder indicated that we are now at the main motion.

The motion passed with only Judy Compton voting no.

[11480](#)

Accepting the Conservation and Sustainability Plan of the Madison Water Utility and its recommendations.

Attachments: [7-22-08 Wtr Conser & Sustain Plan.pdf](#)
[7-30-08 Conserv Chart.pdf](#)

Gail Gawenda indicated that they gave a presentation at the July meeting and that she was available to answer questions.

Satya Rhodes Conway indicated that there are more goals at the back of the plan and that the handout available at the meeting does not have all the goals.

She further stated that she is really glad that the Water Utility did this plan. Her two issues are 1) 100,000s of gallons of water are used to flush the system and dumped into the storm sewers and this also happens when we dump reservoirs. She is hoping to use this water... to fill tankers or water lawns or something. 2) The WU needs to increase the frequency of billings. This will give more information to customers. However, this would require increase in technology. Satya is hoping that as we replace meters, that the WU replaces them with electronic meters so we can get to more frequently billing.

Bill Bremer moved to approve the plan and Cathy Mackin second the motion
The motion to accept the plan was approved unanimously.

11080

SUBSTITUTE - Creating new Section 7.55 to prohibit outdoor wood boilers, amending Sec. 1.08(4) to include citation authority for Director of Public Health and amending, and amending Sec. 1.08(3) of the Madison General Ordinances to establish a bail deposit for a violation.

Attachments: [Version 1 outdoorwoodboilerfactsheetNESCAUM07.pdf](#)
[SDEoutdrWoodBoilerAmendments.pdf](#)
[Equip Loan Memo for Dustrac SLH Contacts 9-17-2008.pdf](#)
[Email from John Hausbeck 10-07-08.pdf](#)
[BEOH Enforcement Letter for OWBs 2008 USE.pdf](#)
[HPB Assoc OWB location Burn practices Recs 06.pdf](#)

John Hausbeck from Public Health Madison and Dane County provided information to the committee that the Department has received some complaints about outdoor wood boilers. There are only a few in the City of Madison – elsewhere they are increasing in numbers and the City needs to do something before we start seeing more and more of them in the city.

John Hausbeck also indicated that these systems are very hard to deal with because there are no regulations. Furthermore, traditional OWB are not efficient and have a high level of air pollution.

Satya Rhodes Conway asked if the City could set an emission standard instead of an outright ban?

John Hausbeck indicated that it would be difficult for the City to measure the air emissions for these units. The City could indicate that we only will allow the use of Outdoor Wood Boilers that have an EPA orange tag, but the City does not have a good way to see if the unit is operating properly. The only thing we can do is to set up a monitoring station on a property line.

Satya Rhodes Conway – The proposed ordinance does not restrict interior devices?

John Hausbeck indicated that that was correct.

Satya Rhodes Conway asked if this ordinance would restrict pellet wood burners or burners that burn or grass on a residential scale, as she believes these types of outdoor burners are very efficient.

John Hausbeck indicated that he understands that there are some efficient systems out there but that the City needs to be careful about what we allow. Furthermore the emissions ratings and the outdoor burners that have an orange tag they are cleaner but they do still pollute. This is especially significant because we have an issue with air quality in the region and being out of compliance with PM 2.5

Michael Vickerman asked if there are any outdoor wood boiler units that currently use a pellet fuel operating in Madison?

John Hausbeck indicated that he does not know of any and that this ordinance applies to both and residents and businesses.

Michael Vickerman indicated that the old systems that are out there are inefficient at taking energy and not using the heat, but that the pellet system are 65% efficiency – twice as efficient as utility sized systems.

Paul Muench asked about one of the papers by the North East Consortium of States, that was handed-out.

Sherrie Gruder indicated that the DNR and NESCAUM have done a lot of work in the area and recommend that orange tag units are 500 feet from an adjacent resident, that the stack is at least 5 feet higher than the height of the roof, and has good emissions. Because Madison does not have many large lots, this policy would apply to very few sites in Madison.

Sherrie Gruder moved to approve the ordinance with the following motion that all pre-existing systems would be outlawed as of 4/1/09. Satya Rhodes Conway seconded the motion for the sake of discussion.

Sherrie Gruder made the comment that there are only 2-5 older units in the City and we already know that one is already hurting someone's health.

Michael Vickerman indicated that he agrees that wood is a renewable energy that is better than gas and coal and in addition, new systems are efficient. Garrick Maine pointed out however, that as John Hausbeck indicated, over time they become less efficient.

John Hausbeck indicated that the Orange Tag OWB are cleaner than old units, but that currently none of them meet Tier Two emissions levels established by NESCAUM and may still result in high levels of air pollution.

Further discussion of this item was referred to the October meeting.

[12003](#)

Residential Energy Upgrades: opportunities and options - by Sherrie Gruder

This agenda item was referred to the October meeting.

SET DATE FOR OCTOBER MEETING

The next meeting of the Sustainable Design and Energy Committee will be Tuesday, October 21, 2008.

ADJOURNMENT

The meeting was adjourned at 6:40 p.m.