Plan Commission
Meeting of June 12, 2023
Agenda # 12, Legistar #78130, subdivision ordinance

Trees
Proposed 16.23(3)4. is new: "For subdivisions or land divisions containing existing stands of mature, high-quality trees, the Plan Commission may require that the subdivision or land division be approved with conditions to limit impact on those stands of trees from the development …"

What constitutes a "stand" of "high-quality" trees is not clear and both terms should be defined. Seattle defines an "exceptional tree" as: "a tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource, and is deemed as such by the Director according to standards promulgated by the Seattle Department of Construction and Inspections." Those standards can be found here (which also define a grove as a group of 8 or more trees 12" in diameter or greater that form a continuous canopy): https://www.seattle.gov/documents/Departments/UrbanForestryCommission/Resources/DR2008-16xExceptionalTrees.pdf

Single trees can be deserving of protection in addition to stands of trees. For example, the Old Spring Hotel, per *Every Root an Anchor, Wisconsin's Famous and Historic Trees*, has "an old black walnut growing beside it since Indian times." This tree is estimated to be about 300 years old. The public expressed concern about the fate of this tree last year when the owner sought to divide the landmark lot into two lots and received approval.

Airport Noise
Proposed 16.23(1)(e) states the regulation is intended to: "Discourage the development of noise sensitive land uses (such as residential, schools and recreational areas) adjacent to highway corridors and airport approach zones, and to ensure that any such development that does occur is planned to mitigate the adverse effects of noise."

The ordinance addresses how to mitigate the adverse effects of noise from highways – there are about 3 pages of text under Highway Noise Land Use Provisions. However, there is nothing addressing how to mitigate the adverse effects of noise from airport approach zones. And, since the ordinance merely discourages the development of noise sensitive land uses in airport approach zones, there is nothing to prevent development of noise sensitive land uses under, or adjacent to, airport approach zones.

Restrictive Covenants
Proposed 16.23(3)7. states: "The City subscribes to development occurring on public streets and served by public utilities and public parklands. However, in the case of land divisions and platted subdivisions that will create privately owned streets, utilities, parklands, greenways, or any other privately owned common facilities, agreements, bylaws, provisions or covenants that govern the organizational structure, use, maintenance and continued protection of those private facilities shall be submitted and approved by the Director of the Department of Planning and Community and Economic Development and the City Attorney prior to final approval of the subdivision or land division for recording. The intent of this provision is to ensure to the greatest extent possible that any such private facility serving a subdivision or land division can be maintained privately in perpetuity."

The existing language is: "In the case of land divisions and platted subdivisions, agreements, bylaws, provisions or covenants that govern the organizational structure, use, maintenance and continued protection of the development and any of its common services, common open areas or other facilities shall be submitted and approved by the Director of the Department of Planning and Community and Economic Development and the City Attorney prior to final approval of the development."

The proposed ordinance states that the City supports development occurring on public streets and served by public utilities and public parklands. This is new language, but it is not clear when private facilities are appropriate. In the past year, four proposals were approved for private open space (one also had private alleys and surface parking), and one for a private park. It does not seem, at least from the staff reports, that there was any discussion of why private facilities were needed. Should criteria be developed to provide guidance as to when private facilities are appropriate?

Currently, City approval is (at least arguably) required for all restrictive covenants. The proposed language would only require approval when there are privately owned common facilities. The question is whether the City wants to continue having vast swaths of land forever protected from redevelopment.

Vast areas of single-family housing in Madison are already covered by a Declaration of Protective Covenants, Conditions and Restrictions (or a similarly named document) filed with the Dane County Register of Deeds.

- Most often these Declarations state that only one single-family home is permitted on a lot – not even an ADU is allowed. (Any multi-family is restricted to specified lots, with larger multi-family almost always at corners of the development.)
- These Declarations are <u>created by the developer</u>, not by a group of residents. For example, the Jannah Village development had its final plat approved in 2019, and revised preliminary and final plats were approved in 2020. In November 2022, the developer filed the Declaration, using standard language, which stated "the developer desires to subject the lots identified above and owned by it in the plat of Jannah Village to this Declaration of Covenants and Restrictions." Of the 57 lots in Jannah Village, none were sold until 2023.
- These Declarations are essentially perpetual. The restrictions are for a set period of time, often 20-30 years, but then continue unless a majority of owners (ranging from about 51%-66%) vote to change or terminate the restrictions. Occasionally, the restrictions are only for a set period of time until the development is expected to be fully constructed (e.g., Whitetail Ridge, a 1994 development, terminated after 5 years).
- These Declarations often protect things such as the development's "distinctive style" and protect against "the erection, or maintenance of poorly designed or constructed improvements"

Should the City even allow restrictive covenants? The City does have at least some ability to regulate the use of restrictive covenants: MGO 28.147 declares that negative use restrictions prohibiting a grocery or pharmacy are "against public policy, void, and unenforceable" if the use is otherwise permitted (including as a conditional use).

Respectfully Submitted,
Linda Lehnertz