From: Aaron Gary
To: All Alders
Cc: Kapusta-Pofahl, Karen; Bailey, Heather; Smith, Kate; Vidaver, Regina
Subject: Legistar File # 93802: Appeal of Landmarks Commission decision, 113 Ely Pl
Date: Monday, July 20, 2026 10:43:56 PM
Attachments: Appeal supplement Legistar 93802.pdf
Appeal supplement Legistar 93802 attachment 1.pdf
Appeal supplement Legistar 93802 attachment 2.pdf

Some people who received this message don't often get email from aaronrgary@yahoo.com. Learn why this is important

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Good evening,
Attached please find correspondence and additional material supplementing the Petition of Appeal in Legistar File # 93802.
Please let me know if you have any questions or need anything further from me.
Thank you. Aaron

To: Members of the Common Council

Re: Supplemental Materials, Petition of Appeal of Landmarks Commission Decision,
113 Ely Pl land division
Legistar File # 93802

Dear Alders:

This correspondence supplements the above-referenced Petition of Appeal filed June 22, 2026, by (1) adding a discussion of MGO 28.211, and (2) attaching additional documents. As set forth in the Petition, the Landmarks Commission erred as a matter of law when it approved a land division at 113 Ely Pl in the University Heights Historic District.

The Petition examines in detail, on pages 7-9, the Commission's failure to apply the ordinance definition of "lot," a term intended to cover the entire property described in the Register of Deeds records. The definition of "lot" is critical to the outcome in this matter because the issue on appeal is whether adjacent lots are compatible in size. In comparing size, one must compare apples with apples. Yet, the Commission relied on a meaning of the term "lot" that is contrary to the ordinance definition, creating an erroneous basis of comparison.

A review of the virtually identical definitions of "lot" in MGO 41.02 and MGO 28.211 leaves no doubt that the term "lot" is intended to cover the entire property described in the Register of Deeds records. If the Register of Deeds records identify two or more historic plat sections denominated as lots, the definition of "lot" means all of them together, not any one of them separately (as espoused by staff).

MGO 41.02 states, "Lot means a tract of land, designated by metes and bounds, land survey, minor land division or plat recorded with the Dane County Register of Deeds."

MGO 28.211 states, "Lot. A tract of land, designated by metes and bounds, land survey, minor land division or plat, and recorded in the office of the county register of deeds."

The definitions of "lot" for purposes of MGO chs. 28 and 41 are substantively identical. The term "lot" plays an important role in assessing whether property is of sufficient size for development. In a district zoned TR-C2, the "lot area" for a single-family detached dwelling must be at least 4,000 square feet (not counting the access strip). MGO 28.043(2), 28.135(3)(b)4. It is axiomatic that "lot" in this provision is the entire property, not merely one of several plat sections. The definition of "lot area" in MGO 28.211, which is "the area of a horizontal plane bounded by the front, side and rear lot lines …" reinforces the conclusion that "lot area" is the whole of the property, not a subunit corresponding to a historic plat section. "Lot size" in MGO 41.18(4) and "lot area" in MGO 28.043(2) are synonymous. They both refer to the entire property described in the Register of Deeds records. A comparison of the nearly identical provisions of MGO ch. 41 and MGO ch. 28 offers additional compelling evidence that the Landmarks Commission relied on an erroneous interpretation of the term "lot" in reaching its decision.

As stated in the Petition, there are only three lots that are adjacent to the proposed new lot 2:

101 Ely Pl:	9,531 sq. ft.
1806 Summit Ave:	7,000 sq. ft.
167 N Prospect Ave:	12,737 sq. ft.
Avg.:	9,756 sq. ft.

The average adjacent lot size of 9,756 square feet is nearly two-and-a-half times bigger (precisely 2.44 times bigger) than the proposed new lot of 4,001 square feet. In other words, the proposed new lot is a mere 41% of the average size of the adjacent lots. The Petition includes on pages 2 and 3 maps that identify the adjacent lots and their sizes. The information contained in the map on page 2 is taken from the city assessor's website. I have attached to this correspondence screenshots from the city assessor's website showing the property description and identifying "lot size" of the three adjacent lots. I have also attached records from the Dane County Register of Deeds office showing that the property description recorded with the Register of Deeds for these three lots matches in substance the property description on the city assessor's website.

As set forth in the Petition, petitioners request that the Common Council reverse the Landmarks Commission's decision and find that the proposed new lot is incompatible in size with the three adjacent lots.

Aaron Gary
167 N Prospect Ave
July 20, 2026

Attachments:
Screenshots from city assessor's website
Copies of property records from the Dane County Register of Deeds office

DOCUMENT NO.

1545328

STATE BAR OF WISCONSIN — FORM 2
WARRANTY DEED
THIS SPACE RESERVED FOR RECORDING DATA

Office of Register of Deeds)
Dane County, Wisconsin) ss

Received for Record ..... Oct 27
19 77 at 9:00 o'clock a M
and recorded in vol. 877
of records on page 3
Register

RETURN TO James E. Welch
Ross & Stevens, S.C.
Fuel Wis Bldg
Madison, Wis 53703

Tax Key #.....
This is ..... homestead property.

By This Deed, Palmer R. Kundert and Kathryn E. Kundert, his wife

Grantor conveys and warrants to Robert C. Bless

..... Grantee,

for a valuable consideration

the following described real estate in Dane County, State of Wisconsin:

Lots Two (2) and Three (3), Rosa Replat of Lots 7, 8 and 9, Block 14, University Heights, in the City of Madison, except that part of Lot 3 lying North of the line between Lots 1 and 2 extended Easterly until it meets the lot line between Lots 3 and 4 of said plat.

Exception to warranties: except taxes and special assessments, if any, levied or assessed on or after January 1, 1977, easements and restrictions of record, municipal and zoning ordinances and landmark designation.

Executed at Madison, Wisconsin this 26th day of October, 19 77

SIGNED AND SEALED IN PRESENCE OF

Palmer R. Kundert (SEAL)
Palmer R. Kundert

Kathryn E. Kundert (SEAL)
Kathryn E. Kundert

(SEAL)

(SEAL)

Signatures of Palmer R. Kundert and Kathryn E. Kundert

authenticated this 26th day of October, 19 77

Frederick C. Suhr
Frederick C. Suhr

Title: Member State Bar of Wisconsin or Other Party Authorized under Sec. 706.06 viz. .....

STATE OF WISCONSIN } ss.
..... County.

Personally came before me, this ..... day of ....., 19.....,
the above named .....

to me known to be the person..... who executed the foregoing instrument and acknowledged the same.

TRANSFER
$ 120.00
FEE PAID

THIS INSTRUMENT WAS DRAFTED BY

Frederick C. Suhr

The use of witnesses is optional.

Notary Public, ... County, Wis.

My commission (expires) (is) .....

VOL 877 PAGE 3

Names of persons signing in any capacity should be typed or printed below their signatures.

WARRANTY DEED — STATE BAR OF WISCONSIN FORM No. 2 — 1971 — Wisconsin Legal Blank Company Milwaukee, Wis. (Job 82441)

WARRANTY DEED

DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
3808966

09/12/2003 02:29:25PM

Trans. Fee: 1680.00
Exempt #:

Rec. Fee: 13.00
Pages: 2

002310

This Deed, made between **Carl-Wilhelm R. de Boor and Helen Bee** husband and wife
Grantor and **Aaron R. Gary and** [redacted] * Grantee, husband and wife

Witnesseth, That the said Grantor, for a valuable consideration of one Dollar ($1.00) and other good and valuable consideration conveys to

Grantee the following described real estate in Dane County, State of Wisconsin:

RETURN TO:
A. Gary & [redacted] *
167 N. Prospect
Madison, WI 53726

Tax Parcel No. **251/0709-222-2003-6**

* Redaction to carry out purpose of Wis Stat § 757.07(2)

This **is** homestead property.

Together with all and singular the hereditaments and appurtenances thereunto belonging; and **Carl-Wilhelm R. de Boor and Helen Bee** warrants that the title is good, indefeasible in fee simple and free and clear of encumbrances except recorded restrictions, covenants, easements of record and all applicable zoning ordinances, and will warrant and defend the same.

Dated **September 4, 2003**

Carl-Wilhelm R. de Boor

Helen Bee

AUTHENTICATION

Signature(s)

authenticated this **September 4, 2003**
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by § (4,6) 706.06, Wis. Stats)

THIS INSTRUMENT WAS DRAFTED BY
Attorney Marvin P. Ripp

(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTARY PUBLIC DIANE GREENE STATE OF WISCONSIN

ACKNOWLEDGEMENT

State of **Wisconsin**

SS:

Dane County
Personally came before me this **September 4, 2003** the above named **Carl-Wilhelm R. de Boor and Helen Bee** to me known to be the person(s) who executed the foregoing instrument and acknowledge the same.

Notary Public **Dane** County, **Wisconsin**
My Commission is permanent.
If not, state expiration date: 10-2-03

File No.: 575378

2/3

002311

All of Lot 3, and that part of Lot 4, Block 14, University Heights, In the City of Madison, Dane County, Wisconsin, described as follows: Commencing at the Northeasterly corner of said Lot 4; thence Westerly along the Northerly line of said Lot 4, to a point 131.75 feet Southwesterly from the Northeasterly corner of said Lot 3; thence Southeasterly to a point on the Southerly line of said Lot 4 that is 77.12 feet Southwesterly of the Southeasterly corner of said Lot 3; thence Northeasterly to the Southeasterly corner of said Lot 4; thence North along the Easterly line of said Lot 4 to the point of beginning.

DOCUMENT NO.

1480539

WARRANTY DEED
STATE OF WISCONSIN—FORM 9

THIS SPACE RESERVED FOR RECORDING DATA

Office of Register of Deeds)
Dane County, Wisconsin) ss

Received for Record Aug. 2 ....
19 74 .. at 7:55 o'clock A M.
and recorded in vol. 708 ....
of Records on page 369 ..
Harold K. Dahl ....
Register

RETURN TO HEINRICH K. SCHNOES
1806 SUMMIT AVENUE
MADISON, WISCONSIN

THIS INDENTURE, Made by Ovid O. Meyer and Irene H. Meyer, his wife

grantors of the city of Madison, Dane County, Wisconsin, hereby conveys and warrants to Heinrich K. Schnoes and Marie L. Schnoes, husband and wife as joint tenants

grantees of the city of Madison, Dane County, Wisconsin for the sum of one dollar and other good and valuable consideration

the following tract of land in Dane County, Wisconsin:

Lot Ten (10), Block Fourteen (14), University Heights, City of Madison.

IT IS STATED FOR INFORMATIONAL PURPOSES THAT LYDA MEYER WAS ALSO KNOWN AS LYDA H. MEYER.

In Witness Whereof, the said grantors have hereunto set their hands and seals this 30th day of July, A. D., 19 76

SIGNED AND SEALED IN PRESENCE OF

William A. McNamara

Irene G. McNamara

Ovid O. Meyer (SEAL)

Irene H. Meyer (SEAL)

TRANSFER $ 5.50 FEE PAID

(SEAL)

(SEAL)

State of Wisconsin, Dane County. } Personally came before me, this 30th day of July, A. D., 19 76, the above named Ovid O. Meyer and Irene H. Meyer

to me known to be the persons who executed the foregoing instrument and acknowledged the same.

VOL 708 PAGE 369

THIS INSTRUMENT WAS DRAFTED BY

William A. McNamara

NOTARY SEAL

William A. McNamara
Notary Public, Dane County, Wis.

My commission ~~expires~~ (is) permanent

(Section 59.51 (1) of the Wisconsin Statutes provides that all instruments to be recorded shall have plainly printed or typewritten thereon the names of the grantors, grantees, witnesses and notary. Section 59.513 similarly requires that the name of the person who, or governmental agency which, drafted such instrument, shall be printed, typewritten, stamped or written thereon in a legible manner.)

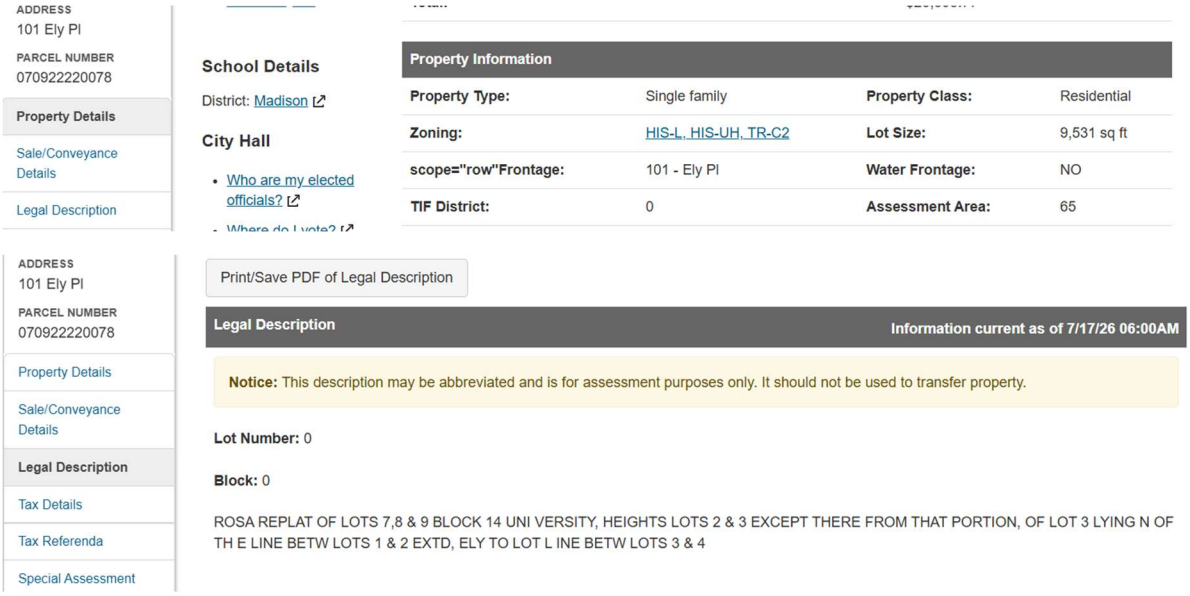
Wisconsin Legal Blank Company Milwaukee, Wis. (Job 31438)

Re: Supplemental Materials, Petition of Appeal of Landmarks Commission Decision,
113 Ely Pl land division
Legistar File # 93802

Attachment 1

Screenshots from relevant pages of city assessor's website,
https://www.cityofmadison.com/assessor/property/

101 El Pl



ADDRESS
101 Ely Pl
PARCEL NUMBER
070922220078
Property Details
Sale/Conveyance Details
Legal Description

School Details
District: Madison
City Hall
- Who are my elected officials?

Property Information			
Property Type:	Single family	Property Class:	Residential
Zoning:	HIS-L, HIS-UH, TR-C2	Lot Size:	9,531 sq ft
scope="row"Frontage:	101 - Ely Pl	Water Frontage:	NO
TIF District:	0	Assessment Area:	65

ADDRESS
101 Ely Pl
PARCEL NUMBER
070922220078
Property Details
Sale/Conveyance Details
Legal Description
Tax Details
Tax Referenda
Special Assessment

Print/Save PDF of Legal Description

Legal Description — Information current as of 7/17/26 06:00AM

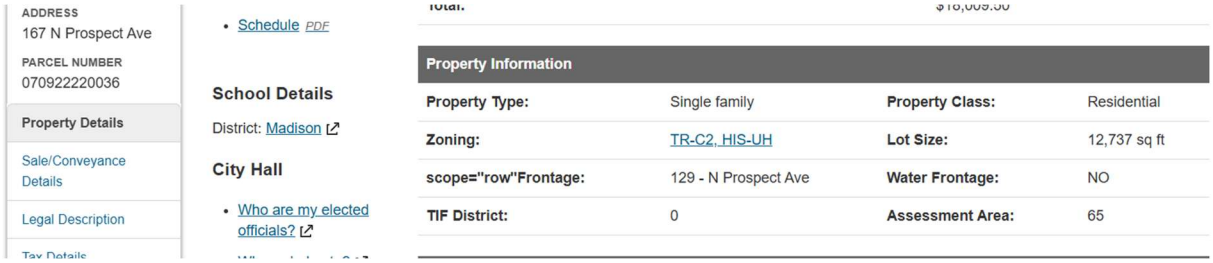
Notice: This description may be abbreviated and is for assessment purposes only. It should not be used to transfer property.

Lot Number: 0

Block: 0

ROSA REPLAT OF LOTS 7,8 & 9 BLOCK 14 UNI VERSITY, HEIGHTS LOTS 2 & 3 EXCEPT THERE FROM THAT PORTION, OF LOT 3 LYING N OF TH E LINE BETW LOTS 1 & 2 EXTD, ELY TO LOT L INE BETW LOTS 3 & 4

167 N Prospect Ave



ADDRESS
167 N Prospect Ave
PARCEL NUMBER
070922220036
Property Details
Sale/Conveyance Details
Legal Description

- Schedule PDF

School Details
District: Madison
City Hall
- Who are my elected officials?

Property Information			
Property Type:	Single family	Property Class:	Residential
Zoning:	TR-C2, HIS-UH	Lot Size:	12,737 sq ft
scope="row"Frontage:	129 - N Prospect Ave	Water Frontage:	NO
TIF District:	0	Assessment Area:	65

ADDRESS
167 N Prospect Ave
PARCEL NUMBER
070922220036

- Property Details
- Sale/Conveyance Details
- **Legal Description**
- Tax Details
- Tax Referenda
- Special Assessment

Print/Save PDF of Legal Description

Legal Description — **Information current as of 7/20/26 06:00AM**

Notice: This description may be abbreviated and is for assessment purposes only. It should not be used to transfer property.

Lot Number: 0

Block: 0

UNIVERSITY HEIGHTS, BLK 14, LOT 3 AND ALL OF LOT 4, EXC THEREFROM THE W 31 FT

1806 Summit Ave

ADDRESS
1806 Summit Ave
PARCEL NUMBER
070922220094

- **Property Details**
- Sale/Conveyance Details
- Legal Description

School Details

District: Madison

City Hall

- Who are my elected officials?
- Where do I vote?

Property Information			
Property Type:	Single family	**Property Class:**	Residential
Zoning:	HIS-UH, TR-C2	**Lot Size:**	7,000 sq ft
scope="row"Frontage:	70 - Summit Ave	**Water Frontage:**	NO
TIF District:	0	**Assessment Area:**	65

ADDRESS
1806 Summit Ave
PARCEL NUMBER
070922220094

- Property Details
- Sale/Conveyance Details
- **Legal Description**
- Tax Details
- Tax Referenda

Print/Save PDF of Legal Description

Legal Description — **Information current as of 7/17/26 06:00AM**

Notice: This description may be abbreviated and is for assessment purposes only. It should not be used to transfer property.

Lot Number: 0

Block: 0

UNIVERSITY HEIGHTS, BLK 14, LOT 10.