

**MEMORANDUM**

**TO:** City Attorney Michael P. May  
Assistant City Attorney John W. Strange

**FROM:** Barry J. Blonien  
Kate Harrell

**DATE:** October 4, 2019

**RE:** *Analysis of Repeal of Edgewood's Master Plan for City Council*

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You asked us to evaluate how repeal of Edgewood's Master Plan would potentially affect the lawsuit. We believe that the City would strengthen its position in the litigation by repealing Edgewood's Master Plan. In particular, if Edgewood's Master Plan is repealed, then the City's interpretation of the Master Plan to prohibit "athletic contests" would no longer be an issue.

Whether Edgewood's Master Plan is operative or repealed matters to this litigation because Edgewood predicates many of its claims on the City's interpretation of the Master Plan to prohibit "athletic contests." There would not be a live controversy over that interpretation if the Master Plan is repealed. Three related concepts—standing, mootness, and ripeness—are critical to understand how repeal of the Master Plan likely alters the landscape for this case. All three principles stem from the constitutional restriction that federal courts may hear only "cases" or "controversies" and may not issue advisory opinions.<sup>1</sup>

The "irreducible constitutional minimum" requirements for standing are that a plaintiff show an injury-in-fact allegedly caused by the defendant's wrongful conduct and some remedy that will redress the alleged injury.<sup>2</sup> Mootness occurs "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome," that is, "when it is impossible for a court to grant any effectual relief whatever to the prevailing party."<sup>3</sup> And ripeness, which generally requires a final

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<sup>1</sup> See U.S. Const. art. III, § 2.

<sup>2</sup> See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)

<sup>3</sup> *Trinity 83 Dev., LLC v. Colfin Midwest Funding, LLC*, 917 F.3d 599, 601–02 (7th Cir. 2019).

decision before pursuing a claim, “is predicated on the central perception that courts should not render decisions absent a genuine need to resolve a real dispute.”<sup>4</sup>

Repeal of Edgewood’s Master Plan would likely moot many of Edgewood’s claims, including its appeal of the ZBA decision. When “an event occurs while a case is pending . . . that makes it impossible for the court to grant any effectual relief,” the case should be dismissed as moot.<sup>5</sup> As the Seventh Circuit recently explained, “[i]n order to avoid mootness, there must be a live controversy in which the parties can obtain some relief from the court.”<sup>6</sup> If there is no Master Plan, then there is no reason for a court to rule on its interpretation. It seems that there would no longer be any basis for the Court to grant declaratory or prospective relief if the Master Plan is repealed, thus significantly narrowing the issues for litigation as there would no longer be a live controversy surrounding the bulk of Edgewood’s existing claims.

It is our opinion that repeal of Edgewood’s Master Plan would put the City of Madison in a stronger position in the litigation. There will be far fewer live issues for Edgewood to pursue if the City repealed Edgewood’s Master Plan.

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<sup>4</sup> *Wisconsin Central, Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008) (internal quotations and citations omitted).

<sup>5</sup> *Pakovich v. Verizon LTD Plan*, 653 F.3d 488, 492 (7th Cir. 2011). See also, e.g., *St. John’s United Church of Christ v. Chicago*, 502 F.3d 616, 626 (7th Cir. 2007) (“[W]hen the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome, the case is (or the claims are) moot and must be dismissed for lack of jurisdiction.”).

<sup>6</sup> *Auto Driveaway Franchise Sys., LLC v. Auto Driveaway Richmond, LLC*, Case No. 18-3402, Slip Op. at 5 (June 28, 2019).