

**MEMORANDUM
OF
KOUA VANG
IN RESPONSE TO CITY ATTORNEY'S OFFICE MEMORANDAUM
March 27, 2013**

After reviewing Assistant City Attorney O'Brien's memorandum dated March 27, 2013 and with all due respects, his opinions are wrong.

1. Whether there was a decision or determination made by the zoning administrator

Attorney O'Brien correctly stated the jurisdiction of the ZBA as follows:

MGO 28.205(3) Jurisdiction.

The Zoning Board of Appeals has the following jurisdiction and authority:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this chapter.

(b) To hear and act upon applications for variances from the terms provided in this chapter (Refer to Sec. 28.184 for procedures and standards).

(c) To hear and decide appeals where it is alleged there is error in a determination made by the Director of the Department of Planning and Community and Economic Development.

(d) To hear and decide disputes concerning the district boundaries shown on the official Floodplain Maps.

(e) To hear and act upon all other matters referred to it upon which it is required to act under this chapter.

This appeal is made pursuant to subsection (a) and (e). Perhaps, Attorney O'Brien was not aware of the City of Madison Official Notice dated March 18, 2013 and it was issued by the Code Enforcement Officer, Jacob Moskowitz. This official notice is an order, requirement, decision or determination made by the zoning administrator. The notice uses the languages "**CORRECTIONS REQUIRED**", "**Discontinue all prohibited uses, including camping, from the Agriculture zoned property at 3600 Portage Road. Camping is not an allowed use in the Agriculture District. No approvals can be obtained to allow camping on the property**". "**The violation shall be corrected on or before: March 19, 2013**".

Mr. Tucker's email dated March 7, 2013 and the meeting of March 15, 2013 were decision of the zoning administrator. The email is clearly state in part ". . . **the City will be issuing you municipal citations for each day the camping activity is occurring on the site.**"

Subsection(e) is the broad jurisdiction, which it states "(e) **To hear and act upon all other matters referred to it upon which it is required to act under this chapter**". This subsection allows the

ZBA broad jurisdiction to hear any and all other matters referred to it. The interpretation of the zoning ordinance is a matter that both I and Mr. Tucker agreed that the ZBA can act under this chapter. It was correctly referred to this ZBA by Mr. Tucker, the zoning administrator.

2. **Does Ordinance 28.205 give the Zoning Board of Appeal jurisdiction to hear this matter.**

Attorney O'Brien or the City Attorney Office should have reviewed Ordinance 28 before it was amended, adopted and became effective. Now it is too late to argue that the ZBA does not have authority to make constitutional decision. Under the new Ordinance 28.205(5)(b), it reads

The applicant shall file a notice of appeal with the Zoning Board of Appeals. The notice of appeal must specify the grounds for the appeal, including a specific reference to the terms of this chapter, state or federal law, or the state or federal constitution that the applicant believes were incorrectly applied. Emphasis added

By representing the City of Madison, its own attorney now is making a contradictory opinion of this Chapter 28.205 and the rulings of prior case laws. The 3 case laws Attorney O'Brien cited in his Memo were dated in 1932, 1973, and 1988. The City of Madison's Zoning Ordinance Chapter 28 was recently amended by ORD-12-00134, adopted on 10/16/2012, and became effective on 1/2/2013. A careful city attorney office would and should have recommended then that the words "**state or federal law, or the state or federal constitution**" cannot be included in Ordinance 28.205(5)(b). Attorney O'Brien's wrote his Memo a little too late.

The Common Council of the City of Madison approved Ordinance 28.205(5)(b) and gave the ZBA the jurisdiction to hear grounds under "state or federal law, or the state or federal constitution".

My appeal not only raised the constitutional challenges, but in my letter dated March 15, 2013 I also provided

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5. Other grounds that are fair and equitable.

Is it fair and equitable that (1) the City did not order, require, decide or determine that the other 27 locations of encampments by the homeless since October 2011 in the City of Madison were not enforced until me and that (2) no camping use at all is permitted in the entire city of Madison just because the City forgot to make it either a permitted or conditional use? Under its broader jurisdiction, the ZBA can also hear this fair and equitable issue.

Pursuant to Ordinance 28.205(3) and Ordinance 28.205(5)(b), the ZBA have jurisdiction and can hear this matter. According to Ordinance 28.205(6), the decision of the ZBA is a final administrative decision, and is subject to judicial review. If the City or I are not satisfied with the final decision of the ZBA, either of us then can ask for a judicial review.