

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 16, 2019

SENT VIA EMAIL & U.S. MAIL
allalders@cityofmadison.com

Council President Shiva Bidar and Council Members
Madison Common Council
210 Martin Luther King Jr. Blvd.
Room 417
Madison, WI 53703

Re: Edgewood High School Lawsuit & Proposed Zoning Code Amendments

Dear Council President Bidar and Council Members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the Common Council's proposal to amend conditional use permit requirements for Campus-Institutional Zoning Districts. This letter will also address FFRF's view of the lawsuit Edgewood High School has filed against the City of Madison.

FFRF is a national non-profit organization, headquartered in Madison, with more than 30,000 members. This includes more than 1,400 members in Wisconsin, hundreds in Madison, and members who live in the Dudgeon-Monroe neighborhood that would be adversely impacted by the construction of a stadium, and/or stadium-style lighting, at Edgewood High School, a tax-exempt entity. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

On behalf of our local members, we encourage the Common Council to proceed with amendments to the Madison Zoning Code that would require Edgewood, and others, to seek conditional use permits for this type of development. We also encourage the Common Council to seek outside legal counsel to advise the City on Edgewood's lawsuit.

When Edgewood High School voluntarily entered into its master plan, the school's neighbors spent hours negotiating with the school and providing feedback on the plan. Then, as now, many neighbors opposed the construction of a stadium on Edgewood's campus due to concerns about

noise, lighting, traffic, and other collateral effects. In 2014, the community thought that the matter was resolved by mutual agreement. The final version of the master plan allowed Edgewood to proceed with several of its desired projects but did not permit the construction of new stadium features. Now, Edgewood's leaders are attempting to violate the plan by adding stadium-style lighting to the school's field. Because of lighting restrictions, Edgewood is attempting to throw out the entire master plan agreement. These actions have left neighbors feeling deceived by Edgewood's "bad faith negotiating tactics" with the community.¹

In addition to asking the City of Madison to allow Edgewood to throw out its master plan, the school is now suing the City for simply enforcing a plan that Edgewood itself negotiated with its neighbors and voluntarily agreed to. While Edgewood's suit claims that it is being treated unequally compared to other schools, in reality Edgewood is trying to use its religious status to demand special treatment.

FFRF attorneys have reviewed the complaint filed by Edgewood in federal court. Edgewood's claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), related to building outdoor lighting (and other building conditions), are meritless. When analyzing RLUIPA claims, the Seventh Circuit evaluates fairness based on "Accepted Zoning Criteria," including "Traffic control, density management, and noise-reduction."² The effects that stadium lighting would have on Edgewood's neighbors justifies the City's decision to deny the school's request.

FFRF is also aware of the Common Council's current proposals both to amend the conditional use permit requirements for schools that have not adopted a master plan, and to approve Edgewood's request to repeal its master plan. During the Common Council's September 3, 2019 meeting, representatives of Edgewood contended that changing the zoning requirements for schools without master plans would not put Edgewood on equal footing with other schools (if and when its master plan is repealed). This contention is also meritless. Municipalities are entitled to make changes to their zoning requirements. A federal court has already rejected a RLUIPA claim brought by a religious high school that wanted to build stadium lighting. The school claimed it was being discriminated against because a non-religious school had built similar lighting before the local zoning code was amended to regulate stadium lights. The court held that because the law had changed, the two schools were not similarly situated for RLUIPA purposes and rejected the school's claim.³

¹ Lisa Speckhard Pasque, *West side neighborhood group accuses Edgewood of misleading public over stadium needs*, The Cap Times, Jan. 9, 2019

² *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 371-386 (7th Cir. 2010)

³ *Marianist Province of United States v. City of Kirkwood*, No. 4:17-CV-805RLW, 2018 WL 4286409, at *5 (E.D. Mo. Sept. 7, 2018).

Requiring that all schools without a master plan must request a conditional use permit before making improvements or modifications for secondary uses (including the construction of stadium lighting) ensures both equal treatment between schools and protects the rights of community members whose property may be affected.

We ask that the City of Madison vigorously defend the community against Edgewood's attempt to use RLUIPA to undertake construction not authorized by its master plan. This would include, if necessary, seeking the expertise of outside legal counsel with experience in RLUIPA claims. We also encourage the Common Council to proceed with its plans to amend the Madison Zoning Code. It is appropriate to require schools without master plans that are zoned as Campus-Institutional Districts to obtain conditional use permits for the establishment, improvement, or modification of structures for secondary uses.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Elliott", with a stylized flourish at the end.

Patrick Elliott
Senior Counsel

PE:dchh