

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 6

DANE COUNTY

ASSOCIATED BUILDERS & CONTRACTORS OF WI, INC., et. al

Plaintiffs,

v.

Case No. 2021CV001729
Action for Declaratory Judgement

CITY OF MADISON,

Defendants.

AFFIDAVIT OF MATTHEW TUCKER

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Matthew Tucker, being duly sworn, states as follows:

1. I am currently the Building Inspection Director for the City of Madison. I started in this role in July 2021. As Director, I oversee the City's zoning, code, and standards enforcement, and construction plan review and inspections for the City. Before being appointed Building Inspection Director, I served as the Zoning Administrator for the City of Madison since June 2005.
2. As Zoning Administrator, I was directly involved in the administration and enforcement of Madison General Ordinance Chapter 28, our zoning ordinance. I oversaw six zoning staff employees.
3. I worked on the drafting and legislative process of MGO § 28.129, Madison's bird-safe glass ordinance. City policy makers requested I work with staff to reduce the known risk

of bird collisions with buildings. At the time, new development projects were being proposed to City committees and commissioners were increasingly asking applicants how they proposed to reduce bird collisions. Policy makers wanted uniform requirements to protect wildlife in a hostile built environment.

4. It is a known risk that birds do not see glass and have fatal collisions with exterior glass on buildings. Bird-safe glass treatments in built environments make glass visible for birds and reduce the risk of collisions.
5. My staff and I did research on best practices in bird-safe glass, including consulting with our counterparts in Toronto, Canada, who have had a bird-safe glass ordinance for over fifteen years. I also worked with the Madison Audubon Society and the American Bird Conservancy.
6. On August 14, 2020, the Madison Common Council adopted the zoning ordinance, MGO § 28.129, "Bird-Safe Glass Requirements." MGO § 28.129 went into effect on October 1, 2020.
7. MGO § 28.129 applies to all exterior construction and development activity, including the expansion of existing buildings and structures within the sub-categories.
8. The three categories of buildings are: (1) buildings or structures over ten thousand (10,000) square feet; (2) sky-bridges; and (3) at-grade glass.
9. For buildings over ten thousand (10,000) square feet, bird-safe glass treatment requirements depend on the size and location of windows or glass in the building façade.
10. A builder and a developer could design a new building that needs no bird safe glass.
11. MGO § 28.129 does not mandate how the owner meets the bird-safe glass requirement if it applies to their building. The ordinance suggests several mitigation options, in addition

to providing discretion to the Zoning Administrator to approve other mitigation treatments. The ordinance suggests where the mitigation is required.

12. Mitigation measures are needed if the windows are over fifty (50) square feet and for corner windows. Corner windows are included because that is where the birds see through the glass corner to an exterior scene around a building corner, which results in collisions.
13. Acceptable bird-safe mitigation treatments include installing visual marker such as etched glass, adding adhesive dots to glass, or building-integrated structures like non-glass double-skin facades, metal screens, fixed solar shading or exterior insect screens.
14. Bird-safe glass is analogous to treatments like tinting or material types like bricks and metal panels – materials on the outside of a building between conditioned parts of a building and the outsides of buildings.
15. The City's zoning code includes regulation of materials. For example, MGO § 28.060(2)(d) prescribes the minimum amount and placement of door and window openings and MGO §28.060(2)(d)1. regulates the tinting of windows and doors and use of spandrel (non-vision) glass. MGO § 28.060(2)(g) regulates the materials palette, such as stone, masonry, or textured cast stone, required for nonresidential and mixed-use buildings.
16. The ordinance sections above, along with our bird-safe glass ordinance, are form-based codes. Bird-safe glass regulates the form of built environment, not how the space is used.
17. Madison's zoning code is a hybrid zoning code, meaning it contains both form and use sections. Use-based zoning separates land use by district, like commercial, residential and industrial. Form-based zoning regulates about how the building relates to the street

and other buildings and introduces design principles. For the purposes of zoning, a 'form-based code' means a code based primarily on urban form, including the relationship of buildings to each other, to streets and to open spaces –rather than based primarily on land use. It puts the primary emphasis on the physical form of the built environment.

18. Zoning is the division of lands by legislative regulations, into areas or zones, which specify allowable land uses and size restrictions.

19. Zoning codes are oriented toward how a project fits into a community by regulating setbacks, types of uses, height, parking requirements and design. Zoning is separate and distinct from building code.

Dated this 21st day of March, 2022.



A handwritten signature in black ink, appearing to read 'Matthew Tucker', written over a horizontal line.

Matthew Tucker

Subscribed and sworn before me
this 21st day of March, 2022

A handwritten signature in purple ink, appearing to read 'Katherine Mooney', written over a horizontal line.

Notary Public, Dane County, Wisconsin
My commission expires 12/19/22