

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

I. Other Presentations In Which Either The Date And /
Or Sponsoring Organization Is Missing

3. Development Topics

- a. "Truth in Land Development Ordinance",
focus on City of Middleton, WI
ordinance, 1978

Truth in Land Development Ordinance

Proposed

Focus on City of Middleton, WI, Ordinance - 1978

- I. A decision requires identification of alternative courses of action and then a choice made with the assistance of values, objectives, and then criteria - all generated from facts.
 - A. Under Council findings, where are the facts that support
 1. Land speculation is forcing people out of Middleton. The real substance of the argument is that you are growing too fast and a way has to be found to prevent persons from entering the home owner market in Middleton. To the degree that this ordinance motivates builders and developers to avoid Middleton, it creates monopoly pricing and drives out even more prospective home buyers.
 2. What anti-development policies are increasing pressure in Middleton? Could it be that anti-business, social welfare policies in Madison encourages people to smaller communities where taxes are lower or the image of government is more traditional, American conservative? Passage of this ordinance will certainly ruin Middleton's image for fair play and conservatism. Cities license restaurants, pizza parlors, and taverns without requiring that gross profit be identified; to travel agencies have to report their gross profit margins and costs? Or auto dealers?
 3. The argument that developments must be financially sound is based on what finding? Has a developer gone broke? Are required improvements not bonded?
 4. What do you mean by economic stabilization? Growth management or socialization of private business? What do you mean by market information? Market information means price, not original cost.
 - a. Why not require all persons to report offering price, number of units sold per month, and new additions to the supply so that any prospective home buyer could go to City Hall and see the total supply available, the rate of sale in each area, and the prices realized on each lot so they know what their choices are and where the action is. The map could also reveal preliminary plats should the consumer wish to wait for something more to his liking in the future. A full knowledge of supply and rate of absorption would discourage unnecessary platting since all developers would know the relationship between the inventory of lots and the rate of sale.
 5. Informed markets do not result from any awareness of cost. That is economic baloney.
 6. As said before this is a false alarm. There are no facts to support this contention.
 7. A change in ownership does not affect the planning function for the Planning Commission if it is working objectively on the merits of each plan and design; in any event, where are there factual findings that indicate that you have been hurt?

- II. Assuming you are attempting to measure cost, then your prescribed form on page 9 is significantly incomplete and misleading. Where is there provision for sales cost, interest cost, return on capital supplied by equity, return on management and executive time in platting and supervision? If anything, the disclosure form will mislead the public as to the true costs.
- A. On page 10, in 28.11, it is stated the chapter is remedial but there are no facts about what it purports to remedy. It is represented as a civil public welfare ordinance but in fact it is trying to socialize land development. Why not socialize pizza parlors which have the highest gross margin in the food margin in the food business?
- III. The ordinance gives the appearance of capable legal craftsmanship; but the premises and the proposed remedies are a perversion of the legislative process.
- A. The premises are those of prejudice and demagoguery. The remedy is counterproductive to the stated objective as it will create monopoly for the subdividers who remain with inventory and the owners of existing homes, causing unnecessary inflation of prices.
- B. It will not stabilize Middleton; the increase in tax base will flatten out while the number of children will continue to grow; the ordinance itself will become a major source of political controversy.
- C. Local builders who also subdivide will simply price the lot lower and the house higher and appear to be more competitive; your small local long term craftsman in Middleton will quit operating in Middleton rather than face the cost of fines and litigation.
- D. Once the violation of business privacy has been established on false premises, then why can't the City require profit and loss statements to be published and provided the customer of every business, licensed or otherwise?
- E. If the legislation is motivated by:
1. Growth management then it is uninformed and clumsy as there are better model ordinances that follow.
 2. If it is to provide market information to the consumer, then tell the consumer about the existing supply of alternatives, preliminary plat supply potentials, and prices and rate of sale throughout the community.
 3. If the legislation is vindictive or representing personal animosity or anti-business political philosophy, then don't be coy. Be honest. Truth in public disclosure begins with truth from our legislators.

AN ORDINANCE TO CREATE CHAPTER 28
OF THE MUNICIPAL CODE OF THE
CITY OF MIDDLETON ESTABLISHING A
TRUTH IN LAND DEVELOPMENT ORDINANCE

The Common Council of the City of Middleton do ordain as follows:

Chapter 28 of the Municipal Code of the City of Middleton is hereby created to read as follows:

28.01 TITLE

This ordinance shall be known as the Truth in Land Development Ordinance, Middleton, Wisconsin.

28.02 COUNCIL FINDINGS

The Common Council finds that:

- (1) land speculation contributes to inflation and artificially increases land prices and removes persons from and prevents entry into the home-owner market;
- (2) the highly restrictive anti-development policies of surrounding communities have caused subdividers and builders to place increased pressure for growth upon the city;
- (3) the promotion of stable and financially sound developments is in the best interests of the citizens;
- (4) economic stabilization will be enhanced and the competition among the various subdividers and builders and other firms and persons engaged in housing-related industries and businesses will be strengthened by informed use of market information;

(5) informed use of market information results from an awareness of various costs to consumers and officials charged with safeguarding public interests and welfare;

(6) the economic stability of the Middleton community is jeopardized by the financial decline or failure of subdividers or owners of subdivision development projects;

(7) undisclosed transfers of interests in subdivision development projects between or among subdividers or owners negatively affects the planning function of the city and the Plan Commission.

28.03 INTENT AND PURPOSE

It is the intent and purpose of this ordinance to promote subdivider and builder competition to foster the good order and commercial benefit of the City, and to assure a meaningful disclosure of housing market information so that the consumer will be able to more readily compare land and housing costs, know the reasons for those costs and avoid uninformed land and housing purchases.

28.04 AUTHORITY

This ordinance is adopted under home rule authority granted the city by Art. XI, sec. 3, Wisconsin Constitution, §66.01(1), Wis. Stats. 1975 and the specific delegations of authority of secs. 62.11(5) and 236.45 (1) and (2).

28.05 SEVERABILITY

If a provision of this chapter is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this chapter is held invalid in one or more of its applications.

the provision remains in effect in all valid applications that are severable from the invalid application or applications.

28.06 GRAMMATICAL USAGES

(1) The word "may" means that an action is either authorized or permitted.

(2) The word "shall" means that an action is both authorized and required.

(3) The phrase "may not" means that an action is both unauthorized and forbidden.

28.07 APPLICABILITY

(1) The provisions of this chapter shall apply to the sale or transfer of newly-platted residential lots and newly-constructed dwelling units, including rental units and condominiums.

(2) The provisions of sec. 28.10(2) shall not apply to lands subdivided or divided prior to enactment of this chapter.

28.08 DEFINITIONS

(1) The definitions and rules of construction set forth in this section are applicable for the purposes of this chapter only.

(a) Preliminary plat: a map delineating the features of a proposed subdivision or land division as described in sec. 19.05(2) submitted to the Plan Commission for preliminary consideration prior to the final plat, and when required, prior to a land division.

(b) Plan Commission: the City of Middleton Plan Commission.

(c) Subdivider: a person, corporation, partnership or other entity which submits to the Plan Commission a preliminary plat or land division for approval.

(d) Owner: a person, corporation, partnership, or other entity which holds any interest in title to lands submitted to the Plan Commission for preliminary plat approval or land division.

(e) Investor: a person, corporation, partnership, or other entity which offers to pledge or pledges, loans, holds, supports, or in any way offers to or receives value in a project subject to this chapter.

(f) Builder: a contractor, subcontractor, person, corporation, partnership or other entity which improves a lot or parcel subject to this chapter.

28.09 MANDATED RULES AND REGULATIONS

(1) No preliminary plat may be approved by the Plan Commission unless the disclosure provisions of this chapter applicable to the Plan Commission shall have been fulfilled.

(2) Upon subdivider presentation to the Plan Commission of a preliminary plat or land division as defined in §19.03(11) of the Municipal Code for approval, all the provisions of this chapter shall be fulfilled except that where reference is to an individual lot, the subdivider will be in compliance when he or she provides the information with reference to the largest lot and the smallest lot.

(3) Disclosure of all the information in §28.10 shall be in writing. Disclosure to prospective purchasers shall be in substantially the same as provided in §28.10(3) by the subdivider or his agents. If prospective purchaser contact is by mail or telephone or other than in-person, disclosure shall be by return mail.

(4) The subdivider shall have a continuing duty to disclose in an updated fashion to prospective purchasers and to the Plan Commission after acceptance of offer but prior to closing any changes in the information required to be disclosed under this chapter.

(5) For purposes of subdivider compliance with sec. 28.10, where parts of a single proposed preliminary plat or land division have been purchased from different previous owners at the same or different times, or from the same previous owner at different times, the owner consideration paid for the proposed plat or division shall be determined by

- (a) determining the amount per acre of each previous purchase;
- (b) the percent of the proposed plat of which each separate owner purchase is a part; and
- (c) averaging the different amount per acre of the different parts in proportion to which they are a part of the whole proposed plat or division.

(6) If there has been more than one owner or group of owners of a parcel within two years of the date upon which the parcel is presented to the Plan Commission for preliminary plat or land division approval, the subdivider shall disclose in addition to the provisions of sec. 28.10 the names and addresses and percent interest in the parcel of all previous owners for the preceding five years.

(7) If an owner has acquired title or interest to a parcel forming all or part of a proposed preliminary plat or land division by other than purchase, he or she shall disclose the manner of acquisition and the interests exchanged in the title or interest transfer. The owner shall further disclose the current city-assessed taxable value of the parcel and the next most recent transfer price of the parcel.

(8) Disclosure to prospective purchasers of condominiums under sec. 28.10(1) shall be based on the owner prices paid for the divided lot or parcel upon which the subject structure rests, as if the prospective purchaser had an interest in the land proportionate to the number of units constructed on it.

(9) The subdivider may supply information or explanations in addition to those required to be disclosed under this chapter.

(10) The Plan Commission may from time to time make recommendations to the Common Council for improvements in this chapter consistent with its purpose and intent.

(11) When complying with the requirements of §28.10(1), the developer or his agent shall immediately serve or post by first class mail, postage prepaid, a copy of the information disclosed, to the City Director of Public Works who shall file and preserve same for not less than a five (5) year period.

28.10 DISCLOSURE

(1) A subdivider of lands subject to this chapter shall disclose to any prospective purchaser upon first discussion by either party of price of any lot, improvements or any combination thereof:

- (a) Name and address of owner and date of owner purchase;
- (b) Pro-rata owner price paid for subject lot;
- (c) Estimated average total cost per lot and per square foot to subdivider for adding mandated improvements, including, where applicable, streets, curb and gutter, storm sewer, sanitary sewer, water laterals, sidewalk, street lights, park and open space contribution, and trees;
- (d) Estimated sale price of lot or improved lot, in dollars;
- (e) The percent of (d), above, in excess of the sum of (b) and (c), above;
- (f) Size of subject lot in square feet;
- (g) Dimensions of lot, including frontage, in feet;
- (h) Size in acres and as a percent of entire parcel as acquired by owner as stated in (a), above;

(i) Most recent, pro rata where applicable, city tax assessment at 100 percent market value.

(2) In addition to the items in (1), above, upon presentation to the Plan Commission of a preliminary plat for approval, the subdivider shall disclose:

(a) Purchase price and size in acres of owner purchase of entire parcel of which the whole or a part is presented for preliminary platting or land division;

(b) Name and address of party or parties from whom owner acquired parcel and

1. owner price paid

2. down payment

3. interest rate on mortgage

4. amount of principal on which interest is being paid

5. term of mortgage

6. name and place of business of any lending person, agency, corporation, or other lending entity;

(c) Names and addresses of investors and amount in dollars or other value pledged, loaned, held, received, or in any way offered in support of development or land division;

(d) If applicable, pro-rata price paid by owner for that portion of parcel named in (2)(a) of this subsection, which is proposed for platting or division;

(e) Size of subject lot in acres and as a percent of parcel of which proposed plat and subject lots are a part;

(f) If lot is to be sold with a dwelling.

1. estimated materials cost to builder or contractor adding improvements, whichever is lower, for adding improvements not included in (1)(c) of this subsection;
2. estimated labor cost to builder or contractor, whichever is lower, for adding improvements not included in (1)(c);
3. estimated cost to subdivider of improvements not previously stated.

(g) The estimated combined total sale price for all platted or divided lots in total dollars;

(h) The estimated combined total sale price for all platted or divided lots as a percent in excess of the original pro-rata total owner price paid for the parcel as presented for platting or division.

(3) The following form shall be used in complying with subsection one (1) of this section:

CITY OF MIDDLETON
TRUTH IN LAND DEVELOPMENT
DISCLOSURE FORM

1. Address of lot: _____
2. Name and address of owner: _____

3. Date of owner purchase _____
4. Pro-rata owner price paid for this lot: _____
5. Estimated average total cost per lot and per square foot to subdivider for adding mandated improvements, including, where applicable, streets, curb and gutter, storm sewer, sanitary sewer, water laterals, sidewalk, street lights and park and open space contribution:
 - a) Ave. cost per lot _____
 - b) Ave. cost per square foot _____
6. Estimated sale price of lot or improved lot, in dollars: _____
7. Percent of (6) above, in excess of the sum of (4) and (5) above: _____
8. Size of lot: _____ square feet.
9. Dimensions of lot: _____ x _____ x _____ x _____ feet.
10. Size of lot in acres: _____
11. Size of lot as percent of entire parcel as acquired by owner as referenced in (1), (3) and (4) above _____%
12. Most recent pro rata where applicable city tax assessment at 100 percent market value _____

Disclosure of this information to prospective purchasers of this lot is mandated by Chapter 28, Ordinances, City of Middleton. Penalty for false, inaccurate or non-disclosure, \$500 per violation. Adopted, April, 1978

28.11 RULES OF CONSTRUCTION

This chapter is remedial in nature and all provisions shall be liberally construed to affect its purpose. This is a civil public welfare ordinance and is regulatory in nature. No proof of scienter or intent to violate its provisions shall be required and liability shall be strictly imposed.

28.12 EXEMPTED TRANSACTIONS

The provisions of this chapter shall not apply to renters or prospective renters of residential or commercial property.

28.13 CORRECTION OF ERROR WITHIN TEN DAYS

(1) A subdivider has no liability under this chapter if within ten (10) days of discovering an error and prior to the institution of an action under this chapter the subdivider notifies the person concerned of the error and provides disclosure as required by this chapter. If an offer to purchase has already been accepted or conditionally accepted, or if earnest money or downpayment has been agreed to or made, the subdivider shall make whatever adjustments are necessary to permit cancellation of the accepted offer by the prospective purchaser and return of any earnest money, and place the prospective purchaser in the same position as far as is practicable as he or she would have been in had the subdivider error not occurred.

(2) A subdivider may not be held liable in any action brought under this chapter for a violation of this chapter if the subdivider shows by a preponderance of the evidence that the error or omission was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

28.14 PENALTIES

(1) Whoever

(a) gives false or inaccurate information or fails to disclose information which he or she is required to disclose, in the manner in which it is required to be disclosed and when it is required to be disclosed, under the provisions of this chapter,

(b) uses any chart or table or form in connection with disclosures required to be made under this chapter in such manner as to misstate value of or interest in land, or

(c) otherwise fails to comply with any requirement of this chapter shall be subject to civil forfeiture of not more than five hundred (500) dollars for each violation.

(2) Within this section, each failure to disclose, each violation of the manner or time of disclosure, shall be a separate violation.

This ordinance shall be in force and effect from and after its adoption and publication.

The above and foregoing ordinance was duly adopted by the Common Council of the City of Middleton at a regular meeting held on the _____ day of _____, 1978.

APPROVED:

ATTEST:

Mayor

Clerk

Vote:

Ayes: _____

Noes: _____

Adopted: _____, 1978

Published: _____, 1978

WISCONSIN STATE JOURNAL

MARCH 23, 1978

SECTION 3, PAGE 3

Middleton land plan seeks truth

By Allen Mundth
Of The State Journal

MIDDLETON — Land developers who live in glass houses but conduct their business in the basement are the target of a "truth in development" ordinance introduced to the Middleton City Council this week.

The ordinance would require land developers or subdividers to disclose to prospective buyers of their property the following information:

- ✓ The name and address of the owner of the property and the date it was purchased;

- ✓ Pro-rata price paid by the owner for the property;

- ✓ Estimated cost to the owner of improvements made on the property, including streets, curbs, gutters, storm sewer, sanitary sewers, water lines, sidewalks, and street lights;

- ✓ Estimated sale price of a lot or improved lot;

- ✓ Percentage increase in the sale price of the lot over the owner's purchase price and cost of improvements; and,

- ✓ The most recent city tax assessment of the subject property at 100 per cent of market value.

To council April 4

The ordinance, says its author, Alderman Robert Paul, 2nd District, is aimed at "protecting (persons) entering the housing market for the first time." Paul, a deputy public defender for the state of Wisconsin, purchased his first home in Middleton last year.

Paul said the ordinance is modeled after the federal Truth in Lending Act, a 1968 law requiring lending institutions to disclose to loan applicants the actual costs involved in borrowing money.

The draft ordinance was referred to the council's Plan Commission and will be reconsidered by the council April 4.

If adopted, "the ordinance will permit some objective persons to evaluate where the costs (of development) are," Paul said.

"Developers come in now and say they can't build a house for less than \$40,000 to \$50,000, but no one has been forced to come in and prove those costs with figures," he said.

Disclosures required

The ordinance requires that information previously considered privy by developers be disclosed to the Middleton Plan Commission at the time a preliminary plat is submitted for approval.

Required disclosures to the plan commission would include the owner's purchase price of the subject property, the name and address of the property's former owner, and the amount of the owner's down payment to buy the property.

In addition, the ordinance requires developers to list the interest rate on the purchase mortgage, the amount of principal on which interest is charged, the term of the mortgage, and the name of the mortgage lender. Names of persons who have invested money or other value in a planned development must also be provided to the Plan Commission. The ordinance requires all disclosures be made in writing.

Paul cites the inflationary impact speculative developers have on land prices as one reason the "truth in development" ordinance is needed.

'Ripple effect' cut

"Land speculation," he said, "removes persons from and prevents entry into the home-owner market." The ordinance would reduce the "ripple effect" costly new homes have on the prices of older homes, he said.

Anti-development or "no-growth" policies adopted by communities surrounding Middleton have caused subdividers and builders to place increased pressure for growth in Middleton, Paul said.

The City of Madison's "selective" policy of approving subdivision plats only in areas where extension of municipal services is least costly has forced developers to carry their plans to outlying communities, he said.

The ordinance sets a maximum fine of \$500 for each violation or failure to properly disclose required information.