



LEGAL SERVICES DEPARTMENT

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TO: Alderperson Patti Coenen, Chair
Members of the Community and Economic Development Committee

FROM: James P. Walsh, City Attorney 

DATE: May 9, 2018

RE: Restrictive Covenants

Chair Coenen –

Recently this office received a request by a potential property owner to execute a document indicating the expiration of deed restrictions contained in a deed of conveyance. The Committee has been provided copies of deeds dating back to 1976 which indicates a conveyance from the City of Appleton to Prime Development Company with certain deed restrictions included in that deed. The request is made pursuant to the provisions of §893.33 of the Wisconsin Statutes. Subsection (6) of that section indicates that actions to enforce easements or covenants restricting the use of real estate set forth in any recorded instrument shall not be barred for a period of forty (40) years after the date of the recording of the instrument.

Essentially, what this provisions means is that a restrictive covenant shall be in effect for a period of forty (40) years. After that time, the City is no longer able to enforce those covenants. However, there is an exception to that provision and that exception indicates that if a follow up instrument or document is recorded with the Register of Deeds, those covenants can be extended for forty (40) years after recording of the subsequent instrument. At this time, the covenants contained in the deed from 1976 have expired, and no subsequent document was recorded to preserve those covenants. The covenants therefore have expired and the City will be executing the waiver as requested.

The Committee should be aware that the zoning regulations continue to apply in this area.

If you have any questions in this regard, please do not hesitate to contact me.

JPW:jljg

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