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## City defends covenant ordinance in court

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Madison continues to defend its ordinance that gives municipal muscle to homeowners associations having trouble with members who don't abide by neighborhood standards.

City officials were in Madison County Court Monday on a case that represents the first time a city resident was prosecuted for violating the city ordinance that says persons must comply with a subdivision's restrictive covenants.

"Our contention is that the ordinance is invalid on its face," said attorney Don Boykin, who represents Cross Creek resident Gary Beck, who was found guilty last fall in Madison Municipal Court for violating the zoning ordinance.

However, Mayor Mary Hawkins, called as a witness in the case before County Judge William Agin, said the intent of the ordinance, passed in fall 2006, is to help homeowners association maintain the integrity of their communities.

"This ordinance was passed in good faith to bring people into compliance. What we want to do is maintain covenants and integrity of those subdivisions," she said.

"Homeowners associations try to work in good faith to correct problems in neighborhoods. Nine out of 10 are corrected" by associations working out problems with residents, she added.

Not knowing what the neighborhood's standards are is not an excuse, Butler said, since residents are given copies of covenants at house closings.

"They know what the rules are before they move in," she said. "Why can't those rules be protected?"

"What is wrong with trying to protect property rights?" she said.

Beck appealed his fall 2007 misdemeanor conviction, which carried a \$100 fine, from city court to County Court. The six-and-a-half hour hearing on Monday dealt with Beck's request to dismiss the case and did not address guilt or innocence. Boyton and city attorney John Hedglin have until next week to present their final arguments to Agin in writing so he can reach a decision on whether to proceed with trial.

However, the case before the court may not hinge on the constitutionality issue that Boyton tried to raise. Instead, as Agin said from the bench, the issue might rest on whether the city's zoning requirements for building permits and setback requirements were met.

Madison Alderman John Howland, as president of the Cross Creek association, filed an affidavit with the Madison police in February 2007 complaining that Beck violated the neighborhood's covenants by not seeking approval before installing a greenhouse in his backyard. Beck was notified by letter twice about the covenant violation before Cross Creek sought the city's assistance, Howland said.

Beck said he built the greenhouse in February 2006 from a kit because his children "like horticulture."

Under questioning from Hedglin, Beck said he did not seek prior approval from the association. Hedglin said Beck did not seek approval from the association until after charges were filed in municipal court.

Also under questioning, Beck acknowledged that he did not get a required city building permit and that a city inspector told him that the greenhouse was too close to his property line, violating the city's setback requirement.

"Covenants aside, you're in violation of building permit and setbacks," Hedglin said.

Violating the city ordinance that supports covenants is a criminal offense because the issue is taken to Madison Municipal Court, "the only court we have," Butler said. The aldermen's intent in adopting the ordinance was that it would encourage residents to comply with their neighborhood covenants, rather than face a criminal misdemeanor charge, she said.

Before Beck faced the criminal proceedings, he could have requested the help of the Board of Aldermen, Butler said, but he didn't.

The goal of the city ordinance is to protect property values, the mayor said. "As Madison begins to age, we want it to age gracefully. ... Covenants are put in place to maintain home values. ...

"By making it a violation of our ordinance, this gives the city an avenue to be involved," she said. "This brings strength of the covenants."