

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: May 29, 2014

MEMORANDUM

TO: Landmarks Commission

FROM: John W. Strange, Assistant City Attorney

RE: Landmarks Ordinance Proposed Revisions

On Thursday, May 22, 2014, I attended a meeting that included Steven Cover, Katherine Cornwell, Amy Scanlon, Anne Monks, Stuart Levitan, Michael May, and Jason Tish regarding the draft Landmarks Ordinance. The list below represents input regarding the draft ordinance provided by the City of Madison Department of Planning & Community & Economic Development during that meeting. It is my understanding that Katherine Cornwell or Steve Cover will attend the June 2, 2014 Landmarks Commission meeting to discuss and answer substantive questions relative to these suggested revisions.

(1) Purpose and Intent

1. Consider moving “strengthen the economy of the City” language to a specifically enumerated purpose below.
2. Consider replacing “special historical interest or value” with “historical or architectural significance”. Consider same change throughout ordinance.
3. Consider adding additional enumerated paragraph to reference the Secretary of the Interior's Standards for the Treatment of Historic Properties (<http://www.nps.gov/tps/standards.htm>), and that these standards should be incorporated into the ordinance and preservation decisions whenever possible.

(2) Definitions

1. Consider revising definition of “Improvement” to “means any structure, place, landscape, work of art or other object.”
2. Consider revising definition of Visually Related Area in a way that adopts the concepts introduced in the attached letter to recognize that the historic character of some districts in the City of Madison is not necessarily defined by homogenous architecture within 200 feet of a specific point.

(3) Composition and Terms

1. Consider changing the requirement from two (2) to four (4) the members who shall meet the Professional Qualifications Standards established by the United States Secretary of the Interior.

(4) Powers and Duties

1. In (4)(e), consider replacing “is so large or so visually intrusive as to” with “would”.

(5) Powers and Duties of the Preservation Planner

1. Consider clarifying that the preservation planner is a member of the Planning Division staff who must be a licensed architect and who meets the Secretary of the Interior’s Standards for Professional Qualifications. The preservation planner’s role in relation to the Landmarks Commission is to use his or her professional expertise to advise senior staff, elected officials, and commission members as it relates to upholding the purpose and intent of the Landmarks Ordinance. The proposed language would remove from the current draft the mandatory duty (“shall”) of the preservation planner to uphold the purposes and intent of the Landmarks Ordinance, because that responsibility ultimately rests with the Landmarks Commission, senior staff, and elected officials. The revised paragraph would read as follows:

“Duties of the Preservation Planner

The Preservation Planner is a member of the Planning Division staff and a licensed architect, who meets the Secretary of the Interior’s Standards for Professional Qualifications. The Preservation Planner, or designee (designated by the Planning Director) provides administrative staff support to the Landmarks Commission. The Preservation Planner interprets and applies the U.S. Secretary of the Interior’s Standards for Historic Preservation and advises senior staff in the Department of Planning & Community & Economic Development, elected officials, and the Landmarks Commission on the purpose and intent of the Landmarks Ordinance.”

(7) Designation of Landmarks

1. Consider providing a more comprehensive description of what constitutes a complete application under this section, much like was done in the latest draft for the application process for a Certificate of Appropriateness.
2. Long term (Phase II), consider creating fee structure for designation process to cover the cost of administering an application and designation.

(8) Recission

1. In (8)(b)1., consider revising to say “The owner of record or the Planning Director with advice from the Preservation Planner...”.

(9) Creation and Amendment of Historic Districts

1. Consider simplifying the introductory paragraph to focus on the importance of each historic district adopting specific standards and guidelines for that district, and to be more specific about how to apply the standards and guidelines in each historic district. The introductory paragraph would read as follows:

“Each ordinance creating or amending an historic district shall indicate the basis for designation in (a) above, and shall include specific standards and guidelines for reviewing development in the historic district. Standards and guidelines for development in an historic district should ensure that construction and exterior alterations will be done in a manner sensitive to the character of the historic district. Adopted standards shall apply to every instance of development in an historic district. Adopted guidelines shall serve as a collective set of principles to promote architectural compatibility of new construction and exterior alterations in an historic district. In adopting standards and guidelines, the Landmarks Commission should consider the following in historic districts:”

2. Consider removing the word “mediocre” from (9)(b)2.
3. Consider combining all enumerated paragraphs that contain the phrase “should be visually compatible with the structures and environment with which it is visually related...” into one enumerated paragraph that would begin, “The following elements should be visually compatible with the structures and environment with which it is visually related:” and then list in (i), (ii), and so on, each element to which this applies. This change would potentially combine current numbered paragraphs 3.-7. and 9.-12. into one with subparts.
4. Long term (Phase II), consider addition of visual diagrams to the ordinance or ordinance supplement to depict what is being described.

(11) Certificate of Appropriateness

1. In (11)(d), consider revising to state that “The Landmarks Commission may appoint the Director of Planning & Community & Economic Development to approve...”

(12) Standards for Exterior Alteration or Construction

1. In (12)(b), consider revising to “In the case of construction or alteration...”.

(13) Standards for Demolition or Removal

1. In 13, first sentence, consider revising to “demolition, alteration, or removal...”
2. Long term (Phase II), consider revising (13)(f) to incorporate a building recompense fee as an antidote to deadlocking on the issue of demolition by neglect and to compensate the city for the loss of an historic resource, even if neglect has not been found, in order to establish an historic preservation trust fund that supports ongoing preservation efforts. A possible policy could resemble the following:

(13)(f)“Whether the structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it. If the Landmarks Commission determines that it may be appropriate to demolish the structure for this reason and it finds that any hardship or difficulty claimed is self-created, then demolition shall be subject to a building recompense fee. The recompense fee shall be equal to the fair market value of a similar structure in good repair in the district or \$X (a set amount), whichever is greater. Additional fines may be assessed by the Courts for failure to maintain a historic resource in good repair per section (19) Penalties for Violations. If the Landmarks Commission determines that it is appropriate to demolish the structure regardless of this reason, the demolition shall still be subject to a building recompense fee of \$50,000 to compensate for the loss of a historic resource. A historic preservation trust fund shall be the repository for all building recompense fees and the trust fund shall be used to support ongoing preservation efforts.”