

## Cnare, Rebecca

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**From:** Ledell Zellers  
**Sent:** Sunday, June 27, 2010 4:43 PM  
**To:** Cnare, Rebecca; Fruhling, William  
**Subject:** FW: 6/28 Landmarks Commission meeting comment

Hi Rebecca and Bill,

I just wanted to be sure that commissioners get this before the meeting tomorrow.

Thanks.  
Ledell

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**From:** Linda Lehnertz  
**Sent:** Sunday, June 27, 2010 4:26 PM  
**To:**  
**Subject:** Fw: 6/28 Landmarks Commission meeting comment

I saw your comment to Dan Stephans regarding removing the reference to the landmarks commission in the proposed zoning code. I thought you might be interested in the comment I provided.

Linda Lehnertz

----- Forwarded Message -----

**From:** Linda Lehnertz  
**To:** nprusaitis  
**Sent:** Sun, June 27, 2010 4:19:32 PM  
**Subject:** 6/28 Landmarks Commission meeting comment

I would like to submit the following comments with respect to Item #1, Other Business, on the Landmarks Commission June 28, 2010 agenda.

I have concerns about the proposed removal of "Historic Preservation Landmark and District Overlays" from the zoning code rewrite. I believe further analysis is required prior to the Commission making a decision to support such removal.

The City Attorney's office, in a memo dated June 23, 2010, states that the landmarks ordinance was not adopted under the zoning power of Wis. Stat §62.23(7). Thus, it is not subject to the statutory zoning requirements. The memo further states that if the landmarks ordinance is created as a zoning overlay district, the landmarks ordinance would be subject to Wis. Stat. §62.23(7) (e.g., the Landmarks Commission would no longer have approval over variances).

I am not convinced that a landmarks overlay would subject the landmarks ordinance to zoning requirements. First, the existing structure of the ordinances is substantially similar to the proposed structure. The existing zoning ordinance specifically includes limitations for the Mansion Hill district. (See, MGO 28.08(14), R6H General Residence District.) MGO §28.106 identifies historic district suffixes. In essence, the landmarks ordinance has been operating as an overlay to the zoning ordinance.

Perhaps the problem is simply that the proposed zoning code states the “... Overlay requirements are *created*...” If the proposed zoning ordinance merely referenced the Landmarks Commission, in a manner similar to the existing zoning ordinance, the issue of complying with zoning requirements may no longer exist.

Second, the statutory authority for a city landmarks commission is contained within the zoning section of the city planning statute, Wis. Stats. §62.23(7). Wis. Stats. §62.23(7)(em) provides:

A city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state ...shall ... enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. A city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. The city ... shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

This section was adopted in 1979. When it was modified by Chapter 341, Laws of 1981, the legislative intent was, in part, to “[c]odify the authority of cities and villages, under home rule powers, to adopt and enforce ordinances pertaining to historic landmarks and historic districts, without affecting the validity of any ordinance previously adopted under general statutory authority.” This statement of legislative intent seems to specifically permit cities to have a historic preservation ordinance that is separate from a zoning ordinance. Arguably, a landmarks overlay would not cause the landmarks ordinance to become part of the zoning code.

Other sections of the zoning section of the city planning statute also have a potential impact on the landmarks ordinance.

Wis. Stats. §62.23(7)(e)6 implies that the board of appeals must hear all appeals with respect to historic property:

“in any action involving a listed property, as defined in s. 44.31 (4) [property listed on the national and/or state register of historic places], the board [of appeals] shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.”

However, §62.23(7)(e)1, Wis. Stats (and applicable case law) gives the common council authority to grant special exceptions (conditional use permits). Thus, the existing structure of appeals to the common council might still be permissible with an overlay.

Wis. Stats. §62.23(7)(g) permits the higher standards of a non-zoning ordinance to control:

Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

A separate issue is whether the historic districts would be represented on the zoning map. The draft minutes of the June 14, 2010 minutes indicates that historic districts would be represented on zoning maps, even if the landmarks overlay is removed from the zoning ordinance. If this is true, then why are historic districts not represented on the current zoning map? The “City of Madison Existing Zoning Map” on the Zoning Code Rewrite Page of the City’s website reflects only the R6H. It does not, for example, identify the HIST-TL district.

This brief review suggests that there are a number of issues that should be considered in determining how to best structure the landmarks ordinance. I believe a thorough analysis should be undertaken prior to any Landmark Commission recommendation.

Respectfully Submitted,  
Linda Lehnertz  
Resident of the Third Lake Ridge Historic District