



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Draft AD HOC LANDMARKS ORDINANCE REVIEW COMMITTEE

Thursday, October 9, 2014

5:30 PM

215 Martin Luther King Jr. Blvd.
Room LL-130 (Madison Municipal Building)

***Note* Quorum of the Landmarks Commission may be in attendance at this meeting.**

CALL TO ORDER / ROLL CALL

Present: 4 - Marsha A. Rummel; Mark Clear; Chris Schmidt and Shiva Bidar-Sielaff

Excused: 1 - Steve King

APPROVAL OF September 29, 2014 MINUTES

A motion was made by Bidar-Sielaff, seconded by Rummel, to Approve the Minutes of the September 29, 2014 meeting. The motion passed by voice vote/other.

PUBLIC COMMENT

Stu Levitan, registered neither in support nor opposition. Levitan explained that allowing the property owner to opt out of historic designation is bad policy and has unfortunate consequences. Property owners are not allowed to opt out of zoning. Historic resources are important to the community and are community assets. An individual property owner should not be able to negate a public decision-making process. Levitan explained that the Landmarks Ordinance is law and if the language of the ordinance was changed to allow for owner opt-out, the City would automatically lose Certified Local Government (CLG) status.

Rummel asked that the CLG issues be clarified. Levitan explained that CLG status affords the City with grant funding and the ability to use Chapter 11 of the Historic Building Code.

Zellers asked about the Oregon court decision. Levitan explained that local historic preservation ordinances are enabled by specific state statute and that Oregon's laws are different from Wisconsin's.

Schmidt asked if the legal footing allows for designation given takings issues. Levitan explained that designation of landmarks is not considered a taking under the 4th amendment. Staff explained that the takings issue related to landmark designations has been upheld by the Supreme Court on numerous occasions.

Clear asked if the Landmarks Commission discussed any other mechanisms to allow the property owner to have a say in the designation process. Levitan explained that the Alder person would be responsible for carrying the property owner's opinion to the Common Council where the designation discussion would take place. Clear asked if the language should require a super majority vote of the Common Council if the owner would object to the designation. Levitan explained that the super majority vote

should remain for use on appeals to decisions and that the designation of the property is to protect community assets. Levitan explained that properties that meet the standards should be landmarks for the welfare of the people of the City.

Rummel asked if Levitan had any thoughts on relocating the substance section of the Landmarks Ordinance to a separate chapter. Levitan explained that the Ordinance does address policies and standards for development which could be separated into different sections of the General Ordinances.

James Matson, representing Madison Alliance for Historic Preservation, registering neither in support nor opposition. Matson explained that he was an attorney with statutory and ordinance language drafting experience. He explained that the Alliance is looking for effective and consistent protections for historic resources and clear internally consistent procedures in a format that is easy to read. Those goals require that the structure and powers of the Commission should be in 33.19 with cross reference to the Historic Preservation Chapter. Matson explained that written suggestions were provided for this meeting to guide some of the language revisions. He explained the written comments in more detail which included that owner approval should not be required for landmark designation, that any owner of the property should be able to initiate rescission, that rescission against the recommendation of the Landmarks Commission should require a super majority of the Common Council, that minor revisions are needed in the physical change section, that more flexibility should be given to Common Council for amendment of district standards, that all references to guidelines should be removed, that each district should have specific standards (not one size fits all), that creation of historic districts could be proposed by 5 or more residents, and that more integration with City agencies to plan and preserve is necessary.

Schmidt asked how the creation of a new chapter would solve issues. Matson explained it would be for simple readability so that the reader does not get lost in sub-sub-sub sections. Matson explained that good ordinance structure helps facilitate good decision making.

David Mollenhoff, registering in support and wishing to speak. Mollenhoff explained that he would discuss section 9 and the inconsistency in using standards and guidelines. The word guideline reduces legal precision and increases vagueness and subjectivity. Standards should be used and guidelines should be avoided.

Jeff Vercauteren, representing Urban Land Interests, Apex Properties, Inc., Hovde Properties, LLC, Steve Brown Apartments, and Wright 2102 LP, registering neither in support nor opposition and wishing to speak. Vercauteren discussed the details of the written statement he provided. He explained that landmark designation should require owner consent due to the burden that is placed on the property owner. Vercauteren explained that the owner consent issue should be reviewed by the City Attorney's office.

Bidar-Sielaff asked if Vercauteren had suggestions about the landmark standards. She explained that the property owner should not determine if the property is a historic resource. Vercauteren explained that the standards are a separate issue from the consent of a property owner. He explained that historic resources should be acquired for the community without imposing an obligation on an unwilling property owner.

Clear asked if Vercauteren had any suggestions of how the City may provide the owner some level of involvement in the designation process. Vercauteren explained that there needs to be some attempt to include the consent of the property owner in

the designation process.

Schmidt asked for clarification. Vercauteren explained that the intent of the policy could be discussed in the Committee and then the drafter could capture that intent in the language.

Rummel asked about the addition of the word "significance". Vercauteren explained that "associated with" was troubling and that "significant" was a better word for the standards. Rummel asked how one would weigh the body of work of an architect where "associated with" is good language. Vercauteren explained that certain buildings will stand the test of time and will rise to the top and be more significant.

Jason Tish, representing Madison Trust for Historic Preservation (MTHP), registering neither in support nor opposition. Tish explained that written comments were submitted and that he would only address the owner consent issue. Tish explained that after speaking with Joe DeRose at the Wisconsin Historical Society, Madison would lose the CLG status if the ordinance language was revised to allow owner consent for designation. He also explained that nominations that were submitted by MTHP were later pulled from review due to owner objection which shows the typical practice is to not designate over the objection of the owner.

Clear asked if CLG status would be lost if the ordinance language gave any additional consideration to owner opinion. Tish explained that it would depend on the language.

Franny Ingebritson, registering neither in support nor opposition. Ingebritson explained that she is concerned about the lack of definitions in the ordinance. She provided an example definition for gross volume.

Zellers asked for the source of the definition. Ingebritson explained that the source is noted on the document.

DISCLOSURES AND RECUSALS

None

1. [34202](#) Ad Hoc Landmarks Ordinance Review Committee Materials

No discussion on this item. This file is used as a document repository only.

2. [34577](#) Repealing and recreating Section 33.19 of the Madison General Ordinances to update the Landmarks Commission ordinance.

Bidar-Sielaff explained that the suggestion to move the standards to a separate Historic Preservation chapter seems to be a good one and asked if there were any legal issues. ACA Strange explained that there is not a legal substantive difference. Bidar-Sielaff explained that separating the Commission duties from the Historic Preservation chapter may protect the volunteer commission members. ACA Strange explained that the Commission discussed changing the name of the Commission. Clear explained that having a Historic Preservation chapter may increase the public perception of its importance and may be easier to find. Schmidt explained that the creation of a Historic Preservation chapter makes sense.

Schmidt suggested that the discussion be based on the draft ordinance with references to the corresponding written comments related to that section starting with section 7.

There was general discussion about the designation of Landmarks section (7) including the current process. Staff explained the current process for landmark designation and how it would be changed by the draft language.

There was discussion about how to determine if the nomination is “complete and accurate” and whether there should be a prescribed time frame in which action should be taken in the designation process.

There was general discussion about the designation standards language. Rummel noted that the demolition standards should be revised to address the demolition of building types that are vanishing from the built environment.

A motion was made by Clear, seconded by Bidar-Sielaff, to Refer to the AD HOC LANDMARKS ORDINANCE REVIEW COMMITTEE'S next meeting. The motion passed by voice vote/other.

ADJOURNMENT

A motion was made by Clear, seconded by Rummel, to Adjourn the meeting at 7:06 p.m. The motion passed by voice vote/other.