Ad Hoc Landmarks Ordinance Review Committee
Meeting of December 21, 2021
Agenda #2, Legistar #56918

Comments regarding *Staff Report on Rummel/Heck Design Guidelines*

Policy 2. Protection of historic resources not visible from the developed public right-of way?
The staff report states "there is no exemption for areas that are not visible. The standards as proposed deal with all areas of a property in a historic district."

True, there is not an exemption. However, the ordinance does not generally protect historic features: there is no general prohibition on removing historic features, nor anything requiring that historic features be retained. Thus, when the General Alteration section prohibits removal of historic features on elevations visible from the developed public right-of-way it means, by implication, that historic features on elevations not visible from the developed public right-of-way can be removed.

As has been discussed before, this draft ordinance is rooted in the Secretary of the Interior's Guidelines. Those Guidelines are used to interpret Standards. For example, one of the Standards for Rehabilitation is: "The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided." If the proposed ordinance had similar language, then it would be clear that: (1) in general, historic character should be maintained; and, (2) removal of historic features on elevations visible from the developed public right-of-way is prohibited. There is no such language in the draft ordinance. (Perhaps a legal opinion from ACA Smith could be sought.)

In the draft guidelines under alterations, there is: "Materials, features, decorative ornament and other details should retained, and preserved." But guidelines are not standards. And "should" is used rather than "shall." Former ACA Strange cautioned at the March 9, 2021 Landmarks meeting against turning guidelines into standards (like has been done in the past).

41.xx STANDARDS FOR ALTERATIONS
(1) General
(a) Alterations are defined as any change to any portion of the exterior of a building or site that replaces existing materials or changes its appearance. This section provides standards for building alterations.
(b) Materials and Features
1. Alterations shall be in keeping with the original design and character of the building.
2. The removal of historic features on elevations visible from the developed public right-of-way is prohibited.
3. The introduction of conjectural features without historic precedent on the building shall be avoided.
(c) Replacement

1. Existing features shall be replaced in-kind if they are too deteriorated to repair.

(d) Accessibility

1. Whenever possible, access to historic buildings should be through a primary building entrance.

2. Barrier-free access requirements shall be complied with in such a manner that the historic building's character-defining exterior features and features of the site and setting are preserved or impacted as little as possible.

There are 7 other issues of "historic features" in the ordinance, none of which generally require historic features to be retained.[1]

Alternative:

(1) Historic features should generally be retained. The removal of historic features on elevations visible from the developed public right-of-way is prohibited.

Other related questions:

(1) What is the difference between a "historic feature" and a "character-defining historic feature"? Both are used in the draft ordinance.

(2) The existing ordinance defines "Architectural Feature" (the distinguishing exterior elements of a building or structure including shape, size, design, style, fenestration, materials and decorative details). What is the difference between a "historic feature" and an "architectural feature?"

- Also worth noting is that Landmarks may grant a design variance if certain conditions are met, including: "The alteration will not destroy significant architectural features on the building."

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[1] Other uses of "historic features:"

Also under alterations:

- Mechanical and service equipment shall be installed so that it is as unobtrusive as possible and does not damage or obscure character-defining historic features.
- Security light fixtures or security cameras shall be installed so that they are as unobtrusive as possible and do not damage or obscure character-defining historic features.
- Roof appurtenances such as antennas, satellite dishes, or communications equipment should be installed so that they are minimally visible from the developed public right-of-way and do not damage or obscure historic features.

Under additions:

- New additions on the front of the principal structure are prohibited, except for restoring or reconstructing missing historic features that can be documented.
- The style of porch posts, balusters and rails shall be compatible with the overall design of the historic porch but, in most cases, not duplicate the historic features.
- Roof appurtenances such as antennas, satellite dishes, or communications equipment should be installed so that they are minimally visible from the developed public right-of-way and do not damage or obscure historic features.

Under new structures:

- Roof appurtenances such as antennas, satellite dishes, or communications equipment should be installed so that they are minimally visible from the developed public right-of-way and do not damage or obscure historic features.

Policy 4. ADD Preservation of Historic Features to Standards for Maintenance
Carriage stepping stones
The staff memo said: "While there was discussion of carriage stepping stones, most of those are located in the public right-of-way, which does not have historic designation and is outside of the purview of the Historic Preservation Ordinance."

Carriage stepping stones are NOT outside of the purview of the Historic Preservation Ordinance. The ordinance states it is in the public interest to preserve and maintain improvements in historic districts. "Improvement" includes an object intended to enhance the value or utility of a property. Carriage stepping stones were originally intended to enhance the utility of a property by allowing people to comfortably alight from carriages. Every owner of an improvement is required to protect the improvement and keep the improvement free of structural defects. The City is not exempted from the definition of an owner. The demolition by neglect ordinance, MGO 41.15, also applies to improvements.

With respect to historic districts: "The Common Council recognizes that the City of Madison contains buildings, structures, signs, *features, improvements*, sites, and areas that have significant architectural, archaeological, anthropological, historical, and cultural value." (emphasis added) A CoA is required to "materially alter the exterior of an existing structure." The definition of "structure" includes an improvement attached to land.

Applicable ordinance sections

41.02 DEFINITIONS.
Alteration means any change, addition or modification to an improvement or grading (see improvement).
Improvement means any structure, landscape feature or object intended to enhance the value or utility of a property.
Object means any improvement that is of relatively small scale or of simple construction for primarily ornamental or artistic purposes including fountains, monuments, or sculptures. (See improvement).
Owner means any person having legal possession, custody, or control of an improvement on a landmark site or in an historic district.
Structure means any building or improvement attached to land. (See building and improvement).

MGO 41.13 PUBLIC INTEREST IN PRESERVATION AND MAINTENANCE. The Common Council finds that it is in the public interest to preserve and maintain landmarks, landmark sites, *and improvements in historic districts*, and to vigorously enforce this chapter and other City ordinances that have a related purpose. (emphasis added)

MGO 41.14(1): Maintenance obligation. Every owner of a landmark, improvement on a landmark site, or improvement in a historic district shall do all of the following:
(a) Protect the improvement against exterior decay and deterioration.
(b) Keep the improvement free from structural defects.
(c) Maintain interior portions of the improvement, the deterioration of which may cause the exterior portions of such improvement to fall into a state of disrepair.

In 2017, the City Attorney issued Opinion No. 2017-002. In that opinion he found that the plaque at Forest Hill Cemetery (which extolled the "valiant Confederate soldiers" and "unsung heroes" who are buried there) was an object. He said, in part:

> "Under the definitions above, an item like the Rest Area plaque monument is considered an object and thus an improvement and a structure on a landmark/landmark site. Therefore, any action that would potentially demolish or remove the plaque from the cemetery would require a COA under Sec. 41.09(3), MGO, after a public hearing before the Landmarks Commission pursuant to Sec. 41.17(3)(a) and (b), MGO. Based on this plain reading interpretation of the ordinance, I conclude that neither the Mayor nor the Parks Superintendent have the legal authority to remove such an item without first getting approval from the Landmarks Commission."

https://www.cityofmadison.com/attorney/documents/2017opinions/Opinion2017-002.pdf

Although that opinion addressed a landmark, the analysis is comparable for historic districts.

Some examples of objects are the following.

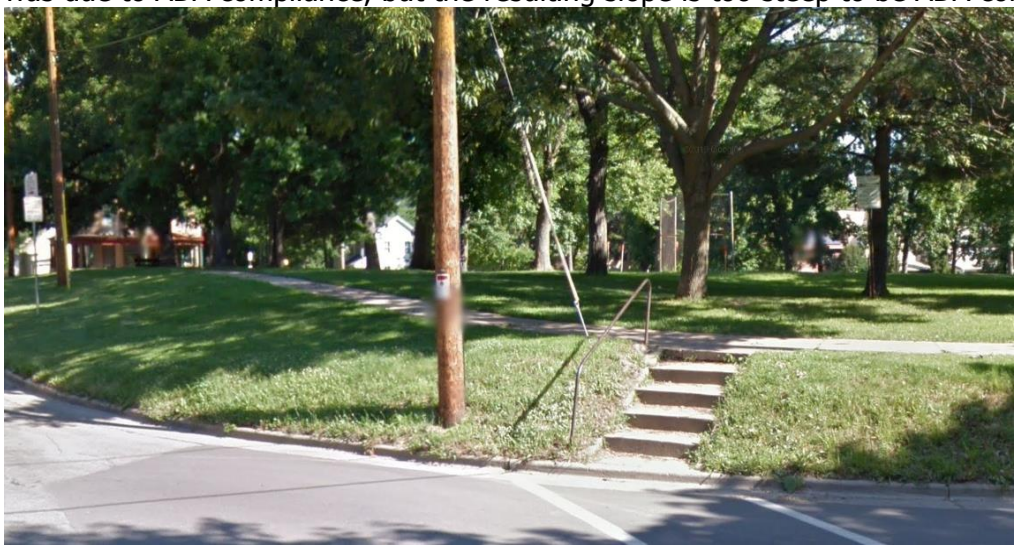
(1) At least one carriage stepping stone was at risk when a part of Spaight Street was reconstructed. The City had marked the stone for removal, neighbors stepped in and the stone was saved.

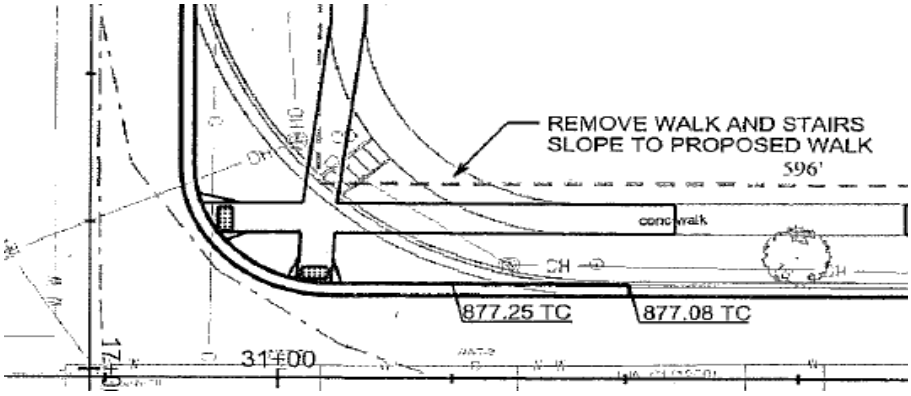
(2) This quirky object was removed in connection with the Williamson reconstruction.

SW corner of Williamson and S Brearly (still existed in June 2011, gone by August 2011)

(3) The benches at B.B. Clarke Beach were replaced in 2009. These benches were in place prior to 1944 (the Historical Society has a 1944 photo that shows the old benches).

(4) These steps at Orton Park were removed in connection with the Rutledge/S Ingersoll reconstruction in 2012 – the corner of the terrace was squared off. (Neighbors believed it was due to ADA compliance, but the resulting slope is too steep to be ADA compliant.)





(5) Orton Park bandstand. Although this is not at current risk, it is an object deserving of protection.

https://www.wibandshellsandstands.com/madison-orton-park.html

The bandstand was erected in 1979. Per a newspaper article in the link above, the bandstand design was a historically appropriate design. There had originally been a bandstand in the park, which was demolished prior to 1925 (per the National Register nomination). Although this bandstand is outside the period of significance, and is only close to 43 years old, it is deserving of the Landmarks Commission review should alteration/demolition be proposed.

The changes on City owned property are not unique to historic districts - it also happens on landmarks. When Johnson Street was reconstructed, the bridge was not protected and equipment kept running into the stonework, resulting in the wings of the stonework being replaced. Burr Jones was administratively allowed to encroach further into the Yahara River Parkway (and has encroached even further with a couple of manicured flower beds and rows of evenly spaced trees).

Ghost signs

If the ordinance is changed to generally protect historic features (as discussed above under Policy 2), then ghost signs will likely be protected. However, does that mean the full sign always needs to be protected? In 2017 a ghost sign was discovered upon removal of stucco covering the brick. This sign had 3 parts to it, the owners removed two parts and retained the horizontal element ("FURNITURE"). Under the draft ordinance, if revised, would the owners be required to retain all three parts?

https://madison.legistar.com/View.ashx?M=F&ID=5128104&GUID=D1EFBB6F-62A8-4DA1-996C-7081728D7B6F

Policy 9. Define a percentage of a building that needs to be commercial in order for a building to be called a commercial building.
In practice, Landmarks does look to the type of building. For example, 817 Williamson was classified by Landmarks as a commercial building, so it was able to be sited at the sidewalk (residential buildings have a setback of 10-15 feet).

Clarification 3. CLARIFY Changes to 9/1/21 draft (meeting minutes do not capture rationale for removal)
Vinyl Siding
The staff memo discusses Wisconsin law. But Wisconsin law currently does NOT apply to alterations. The only restriction as to replacement siding is that it be "within 1 inch of historic exposure/reveal."

Under the Standards for Repairs, general section, there is the Wisconsin language: "Compatible substitute materials shall be similar in design, color, scale, architectural appearance, and other visual qualities." There is not any such language under the Standards for Alterations section. Thus, Landmarks does not have authority to determine whether materials are compatible for alterations.

This language needs to be added to the alterations section. Some municipalities have referenced the statute. This has the added benefit of automatically incorporating any case law that may arise. For example:

> "In accordance with Wis. Stats. § 62.23(7)(em) 2m., any owner of property designated under this article as a landmark, landmark site, or improvement within a historic district may, when undertaking repairs or replacement of such property, use materials that are similar in design, color, scale, architectural appearance, and other visual qualities to the original materials."

In the guidelines, under alterations, it states that compatible substitute materials should be similar in design, color, scale, architectural appearance, and other visual qualities. Guidelines are not standards. And "should" is used rather than "shall."

Roofing materials

This language had been under alterations, additions, and new structures:

> "The following roof treatments are prohibited: thick wood shakes; corrugated or ribbed metal roofing panels; metal shingles; architectural asphalt shingles that have heavy faux shadowing; and any shingles with scalloped or staggered bottom edges."

This reads like a list of roofing materials that have been deemed to not be a compatible substitute material. If so, might this not be a good addition for the guidance document so that property owners have a list of materials they know will not be approved?

Clarification 4. Do repairs require LC/PP approval?

The staff memo says that repairs require a Certificate of Appropriateness, whereas Maintenance does not.

Repairs do NOT require a Certificate of Appropriateness. With respect to maintenance, repairs and alterations, the only time a CoA is required is for a material alteration to an existing structure.

41.12 CONSTRUCTING, ALTERING, OR DEMOLISHING STRUCTURES IN HISTORIC DISTRICTS. No person may do any of the following in a historic district without a certificate of appropriateness issued under Subchapter F:

(1) Construct a new structure.
(2) Materially alter the exterior of an existing structure.
(3) Demolish or relocate an existing structure.
(4) Install a sign.
(5) Divide any lot, consolidate any lot, or voluntarily grant any easement on any lot if doing so may distract from the historic character of the district.

No change has been proposed to MGO 41.12.

Clarification 5. POLICY What triggers LC review for Repair and Alterations?

I read this Rummel/Heck question as asking when something can be approved by staff versus the Landmarks Commission. Should residents need to search out the current version of the Landmarks Commission Policy Manual or should the types of projects that can be administratively approved be listed in the guidance?

Designee authority

The old Landmarks ordinance, MGO 33.19(5)(b)2. said:

> "The Landmarks Commission may appoint a designee or designees to approve certain projects that will have little effect on the appearance of the exterior of such properties, provided that the Landmarks Commission shall first adopt a written policy on the types of projects which can be approved by its designee(s). Unless such certificate has been granted by the commission or its designee(s), the Director of the Building Inspection Division shall not issue a permit for any such work."

MGO 41.05 says, in part: "The Preservation Planner shall staff the Landmarks Commission and carry out the duties that the Landmarks Commission properly delegates to the Preservation Planner under this chapter. In carrying out those duties, the Preservation Planner shall exercise his or her own professional judgment and expertise, consistent with this chapter and subject to general oversight by the Landmarks Commission."

Under the current ordinance, only the Preservation Planner is a designee. Yet the Landmarks Commission Policy Manual lists William Fruhling, Rebecca Cnare, and Dan McAuliffe as designees.

> "As Secretary, the Preservation Planner is hereby appointed as the designee of the Commission and is able to review Category 1, 2 and 3 projects. William Fruhling, Rebecca Cnare, and Dan McAuliffe are hereby appointed to review Category 1 and Category 2 projects. When the Preservation Planner is unavailable, William Fruhling, Rebecca Cnare, or Dan McAuliffe may review Category 3 projects and act as the Secretary of the Commission. Building Inspection Support staff and Plan Review & Permitting staff are hereby appointed to review Category 2 projects."

Clarification 6. 41.xx Standards for Additions

The staff comments state: "This would prohibit construction of a front porch on a structure that never had a porch. Evidence of there being a porch could include historic photographs, building permits, or Sanborn Maps."

One of the case studies presented last March was a new front porch to replace a stoop. The case study analyzed this as an alteration ("any change to any portion of the exterior of a building or site that replaces existing materials or changes its appearance"). If analyzed as an addition, it would be prohibited under the draft ordinance.

The case study said the configuration of the stoop was likely historic for this structure, and that the proposed porch had precedent within the district and was in keeping with the character of the house, but that it was a different style than what was there historically.

Virtually every house has either a porch or a stoop. If changing a stoop to a porch is an alteration rather than an addition, constructing a front porch would almost always be allowed. And, in many/most cases it should be if the porch looks appropriate. As said by the State Historical Society: "The good news is that historic preservation "best practices" recognize that buildings must evolve with the people who use them and with their changing needs." https://www.wisconsinhistory.org/Records/Article/CS4227

Or as said in a March 12, 2012 staff report:

> "It is not the purpose of the Ordinance to create a museum setting for the buildings in a historic district. Instead, the Ordinance is supposed to allow for change in a guided historically logical way."

Garages

The staff memo states: "There is more latitude for alterations to accessory structures, so an addition on the front is a possibility." Currently, there is that latitude, but should there be? There are a number of garages in TLR that are in the side yard at the end of a long driveway and are behind the back of the house. Placing an addition on that garage moves the structure further toward the sidewalk and disrupts the historic pattern.

The draft ordinance prohibits the removal of historic features on elevations visible from the developed public right-of-way. If an addition can be placed on the front of a garage visible from the developed public right-of-way, does that not essentially remove the historic features?

Clarification 8. 41.xx Standards for Additions (5) Windows and Doors (c) 3. And Standards for Alterations (5) (g) 3.

The staff memo states: "The language suggested in the submitted memo specifies material type, which would be contrary to the requirements of State statute previously discussed. The goal is for the storm door not to obscure the historic entry door. If there is evidence of a specific design of a storm door, then that is approvable."

The draft ordinance does not say that. It says: "Storm doors shall be full-light or full-view, wood or aluminum, in the same color as the entrance door or trim, and shall be compatible with the entrance door and the overall design of the building." (Note: The draft language also suffers from specifying the materials.)

Thus, storm doors need to be: (1) full-light or full-view; and, (2) compatible with the entrance door and the overall design of the building. The discretion to approve a storm door "if there is evidence of a specific design" does not exist under the draft language.

Clarification 10. Clarify meanings and usage of visible.

The staff memo states that (1) Landmarks is capable of determining if the design meets the language of these standards and the different uses of the word "visible" and (2) staff/Landmarks can provide their interpretation about what is visible based upon submittal materials, just as they have done for the existing ordinances with this requirement.

The existing ordinances with this requirement just use the word "visible." The ordinance was intended to provide clarity, but the different uses of minimally visible (adding inconspicuous/unobtrusive) do not add clarity. And although Landmarks may be able to sort out the differences, applicants will not necessarily be able to do so.

For example:

> "Roof-mounted solar arrays on flat roofs shall be installed so as to be minimally visible from the developed public right-of-way."
> "Roof vents shall be minimally visible and as unobtrusive as possible"
> I read the second as giving Landmarks the authority to require a different placement of roof vents if the location would be less obtrusive (assuming the vent location would perform equally). Landmarks would not have that ability with respect to solar arrays.
> Or
> Rooftop decks need to be inconspicuous, while security light fixtures need to be as unobtrusive as possible. What is the difference between inconspicuous and unobtrusive? (In the thesaurus, each word is the first option that pops up as a synonym for the other word.)

Is there a reason that rooftop decks for alterations are not limited by: "they are inconspicuous and minimally visible *on the site*"? Is there a reason "street" in used versus "developed public right-of way" for additions and new construction?

> Alterations: Rooftop decks or terraces and green roofs or other roof landscaping, railings, or furnishings shall be installed so that they are inconspicuous and minimally visible from the developed public right-of-way.
> Additions and new construction: Rooftop decks or terraces and green roofs or other roof landscaping, railings, or furnishings shall be installed so that they are inconspicuous and minimally visible on the site and from the street.

Clarification 11. 41.xx Standards for Additions (6) Entrances, Porches, Balconies and Decks (b) 3. and Standards for New Structures (6) Entrances, Porches, Balconies and Decks (b) 1.

The Rummel/Heck memo also asked: Is there precedent in any historic district for projecting, partially projecting/inset, or inset balconies? Should a second-story front porch over a first-story porch count as precedent for a projecting/inset balcony?

I do not believe any historic resources in TLR were built with projecting, partially projecting/inset, or inset balconies.

A second-story front porch over a first-story porch should not serve as "precedent" for a projecting/inset balcony: (1) porches are generally defined as covered area adjoining an entrance to a building and are structures outside the main walls of a building; and, (2) porches have a separate section in the draft ordinance.

Guidelines 1. Modify the guidelines so that it is a document that can be used to help interpret the standards.

<u>Purpose</u>

What is the purpose of the guidelines? Is it to help interpret the standard? For example:

Ordinance: Barrier-free access requirements shall be complied with in such a manner that the historic building's character-defining exterior features and features of the site and setting are preserved or impacted as little as possible.
Guideline: A gradual slope or grade to the sidewalk may be added to access the entrance rather than installing a ramp that would be more intrusive to the historic character of the building and the district.

Or is it a how-to manual? For example:

Maintaining elastomeric caulking between masonry and other building materials will assist with keeping a building weather tight. (Under alterations/exterior walls/masonry.)

Should the specifics regarding interpretation of standards be combined with the educational materials or should there be two documents?

Descriptions of each district

The staff memo states the expanded history and architectural sections are viewed as problematic, do not follow the standards of professional historians, and have noted equity issues.

Each district was created based primarily on the architecture and important personages. During the period of significance for each district, the residents were primarily white. But it was not all the white elite – FS was working people, TLR was a mix of incomes and ethnicities living side-be-side (or in interspersed pockets).

What could be done is an expansion of the history section. Though, for the most part, the districts were not created based on MGO 41.10(2)(a), a section could be added addressing the association of each district "with broad patterns of cultural, political, economic or social history of the nation, state or community."

Guidelines 2. Modify the definition of Guidelines in the ordinance

The staff memo states the guidelines will be a document adopted by the Landmarks Commission. But should it be? Other cities have guidelines adopted by the Council. For example, Raleigh NC (one of the cities for which LORC has been provided information, see document #20 or Legistar 56918), had its guidelines first approved by the Historic Development Commission and then adopted by the City Council. (The purpose of the Raleigh guidelines is to "provide applicants, the commission, and staff a basis from which to reach decisions and an assurance that consistent procedures and standards will be adhered to.")

The policy manuals adopted by other boards/commission focus on procedures, not substance. If the historic guidelines focus on substance, then adoption by the Council should be considered. At a minimum, Landmarks should be given the authority to create guidelines. For example, in connection with variances, Landmarks is given this specific authority: The Landmarks Commission may publish evidentiary guidelines to assist property owners, and to ensure the Commission receives adequate documentation for variances granted under this subsection. MGO 41.19(4)(c).

The staff memo proposes: "When the Landmarks Commission approves the Design Guidelines, they can propose a text amendment to the ordinance that references the Design Guidelines for

use in interpreting the standards in the ordinance." With removal of the guidelines from the ordinance, it sounds like the creation of guidelines would be some unspecified time in the future. If the guidelines are needed, they should be a part of this ordinance rewrite. Plus, finishing the guidelines in connection with the draft ordinance is best for getting public input.

If the guidelines will be left to Landmarks to address at some future date, then the guidelines are not integral to the ordinance rewrite and further discussion could be avoided.

Guidelines 3. Expand the section on New Structures to provide more guidance
The draft ordinance does require review of a lot more details, such as lighting fixtures. However, the main problem with new structures, particularly in commercial districts, has been with the "visually compatible" standard.

The draft ordinance continues with the "visually compatible" standard and lists factors that Landmarks "shall consider." The draft ordinance does not provide any sense on what "visually compatible" means, nor does it provide Landmarks a clear basis on what proposals to accept or reject, nor does it provide guidance to applicants when preparing their proposals. The draft guidance does do all these things. It creates more objective guidance rather than reliance on subjective opinions. (For example, on 706 Williamson one commissioner remarked that 5 stories would be more visually compatible but that 6 stories was not visually incompatible.)

At the June 25, 2019, LORC was presented two options, one was essentially the existing draft and the second broke out each item into 19 items. The decision was made to go with the 5 items rather than having Landmarks make a specific finding on 19 items. The proposed guidance modifications does not disrupt this decision. Rather it provides a basis that can assist Landmarks in making decisions on whether a proposed project is visually compatible.

The illustrations are for the limited purpose of visually explaining what is meant by "visually compatible." It does not preclude illustrated guidelines in connection with a 'best practices' type of manual.

The formatting is different, but that could easily be resolved.

Respectfully Submitted,

Linda Lehnertz